

COUNCIL AGENDA SYNOPSIS



Meeting Date	Prepared by	Mayor's review	Council review
09/10/12	DCS		<i>[Signature]</i>
09/24/12	DCS		<i>[Signature]</i>
10/15/12	DCS		<i>[Signature]</i>
10/22/12	DCS	<i>[Signature]</i>	<i>[Signature]</i>

ITEM No.

**4.C. &
Special 3**

ITEM INFORMATION

STAFF SPONSOR: **DEREK SPECK** ORIGINAL AGENDA DATE: **9/10/12**

AGENDA ITEM TITLE **Tukwila Village Proposed Disposition and Development Agreement (DDA)**

CATEGORY Discussion Motion Resolution Ordinance Bid Award Public Hearing Other

Mtg Date 10/22/12 Mtg Date 10/22/12 Mtg Date Mtg Date Mtg Date Mtg Date Mtg Date

SPONSOR Council Mayor HR DCD Finance Fire IT P&R Police PW

SPONSOR'S SUMMARY **City administration and Tukwila Village Development Associates (TVDA), LLC have agreed on deal terms for TVDA to develop Tukwila Village. The proposed DDA is attached for review and approval, to include a staff report outlining the changes. The Council is being asked to review and discuss the DDA at the Committee of the Whole meeting this evening and then forward it on to the Special Meeting to follow for approval.**

REVIEWED BY COW Mtg. CA&P Cmte F&S Cmte Transportation Cmte
 Utilities Cmte Arts Comm. Parks Comm. Planning Comm.

DATE: **9/24/12** COMMITTEE CHAIR:

RECOMMENDATIONS:
 SPONSOR/ADMIN. **Mayor**
 COMMITTEE _____

COST IMPACT / FUND SOURCE

EXPENDITURE REQUIRED	AMOUNT BUDGETED	APPROPRIATION REQUIRED
\$	\$	\$

Fund Source:
 Comments:

RECORD OF COUNCIL ACTION

MTG. DATE	RECORD OF COUNCIL ACTION
09/10/12	Forward to the Committee of the Whole meeting of 9/24/12
09/24/12	Forward to a future meeting
10/15/12	

ATTACHMENTS

MTG. DATE	ATTACHMENTS
09/10/12	Informational Memorandum dated 9/6/12, with attachments
9/24/12	Informational Memorandum dated 9/19/12
	Proposed Disposition and Development Agreement (DDA)
	Preliminary Site Plan
10/15/12	Informational Memorandum dated 10/9/12
10/22/12	Informational Memrandum dated 10/18/12
	Proposed Disposition and Development Agreement



INFORMATIONAL MEMORANDUM

**TO: Mayor Haggerton
City Council**

FROM: Derek Speck, Economic Development Administrator

DATE: October 18, 2012

SUBJECT: Tukwila Village Proposed Disposition and Development Agreement

ISSUE

City administration requests City Council approval of the proposed Disposition and Development Agreement for Tukwila Village.

BACKGROUND

In 1998 the City adopted the Pacific Highway Revitalization Plan which was developed over four years with extensive public and professional input. The Revitalization Plan listed strategies and actions to, in the words of then Mayor John "Wally" Rants, "...bring a new vitality and image to Pacific Highway South." One of the strategies included in the 1998 Revitalization Plan included the purchase of blighted properties under the urban renewal law for future development. By January 2000 the City had renamed our section of Pacific Highway to its current name as Tukwila International Boulevard. In 2000 the City adopted an Urban Renewal Plan that designated a seven block urban renewal area centered around the intersection of Tukwila International Boulevard and South 144th Street. The Plan also proposed an urban renewal project at that intersection. That proposal became the Tukwila Village project.

Since 2000, the City has invested nearly \$9 million in acquiring approximately six acres of property and the associated businesses and residences and preparing the site. The city has gone through three rounds of issuing requests for qualifications/proposals from the private sector to develop the site, has extensively marketed the site, and has worked through various stages of negotiations with developers. The most recent request for qualifications was issued in March 2011.

On June 6, 2011, the City Council selected Tukwila Village Development Associates, LLC (TVDA) as the developer for Tukwila Village. Since that time, the City and TVDA have been negotiating a Disposition and Development Agreement (DDA), which is the contract that outlines the roles and responsibilities of the City and TVDA and other conditions for the sale of the Tukwila Village property to TVDA. The City and TVDA have also been negotiating with the King County Library System (KCLS) in order for a KCLS branch library to be built on the site.

On December 19, 2011, City staff presented the key proposed deal terms to the City Council. During 2012 the City staff and TVDA continued negotiations and work on the project. As part of the negotiations, the City and TVDA have engaged in considerable site planning and design discussions. TVDA has been performing due diligence, geotechnical and civil engineering studies, site planning, and architectural and landscape design work for the proposed

development. They are on a schedule to submit the project for design review approval within a few months of the approval and execution of the DDA.

On September 10, 2012 City staff presented an overview of the key terms for the proposed DDA. A draft proposed DDA was presented to the Council on September 24, 2012 and included on the Council's agenda of October 15, 2012. A revised proposed DDA is attached to this memo and recommended for Council approval.

DISCUSSION

The attached proposed DDA has been edited from the draft presented at the September 24th Council meeting primarily to correct typos, complete all references to attachments, add a table of contents, and add exhibits. The main substance has not significantly changed. The staff memorandum dated September 6, 2012 that was included in the agenda item for the September 10, 2012 Council meeting provided an overview of the key terms of the agreement and it still reflects the proposed DDA.

RECOMMENDATION

The Council is being asked to approve the Disposition and Development Agreement and consider this item at the October 22, 2012 Committee of the Whole meeting and subsequent October 22, 2012 Special Meeting.

ATTACHMENTS

Proposed Disposition and Development Agreement

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE CITY OF TUKWILA

and

TUKWILA VILLAGE DEVELOPMENT ASSOCIATES, LLC

Tukwila Village

Dated as of _____, 2012

TABLE OF CONTENTS

RECITALS 1

ARTICLE 1 DEFINITIONS, EXHIBITS, SCHEDULE AND CC&Rs 4

Section 1.1 Definitions..... 4

Section 1.2 Exhibits 11

ARTICLE 2 DEVELOPER PREDISPOSITION REQUIREMENTS 12

Section 2.1 Conditions Precedent 12

Section 2.2 Deposit 12

A. Delivery of Deposit..... 12

B. Refund of Deposit..... 13

C. Application of Deposit..... 13

D. Termination/Revocation 13

Section 2.3 Site Plan and Design Review Submittals..... 13

A. Site Plan Submittal and Approval..... 13

B. Design Review Application Submittal and Approval..... 14

C. Proposed Site Plan Conformance..... 14

Section 2.4 Phasing; Development Parcels..... 15

A. In General..... 15

B. City Review and Approval..... 15

C. Plaza Parcel; First Development Phase..... 15

D. Additional Approvals..... 15

E. Library Parcel; Timing..... 15

Section 2.5 Boundary Line Adjustment..... 16

Section 2.6 Street Vacation 16

A. Legislative Action..... 16

B. Final Approval; Meaning..... 16

C. Street Vacation Agreements; Retained Easements 16

Section 2.7 Entitlements and Vesting 17

A. Development Agreement 17

1. Additional Height..... 17

2. Design Review 17

a. Vision Statement..... 17

b. Focal Point Design..... 18

c. Buildings Along Eastern Boundary 18

d. Minimum Interior Height..... 18

e. Landscaping Standards 18

B. Condition Precedent..... 18

C. Naming Rights 18

D. Signage..... 18

Section 2.8 Community Plaza and Commons Ownership and Management 19

A. Intent 19

B. Development of Outdoor Plaza..... 19

C. Development of Indoor Community Commons 19

D. Purchase of Community Plaza Parcel 20

E.	Covenants, Conditions and Restrictions	20
1.	Intent and Purpose.....	20
2.	Recording.....	20
3.	Changes to CC&Rs.....	20
4.	Amendment or Termination After Recording.....	20
5.	Relationship to This Agreement	21
6.	Effect of CC&Rs.....	21
7.	Term	21
F.	Management and Operation	21
G.	Long-Term Lease.....	22
1.	Scheduling.....	22
2.	Plaza Maintenance	22
3.	Commons Maintenance	22
4.	Plaza and Commons Repair	22
5.	Commons Utilities	23
6.	Non-Fixed Assets.....	23
7.	Property Taxes; Insurance.....	23
H.	Dissolution	23
I.	Developer Contribution	23
Section 2.9	Library.....	23
A.	Establishment of Library Parcel.....	23
B.	Purchase and Sale Agreement with KCLS	23
C.	Infrastructure Improvements Benefiting Library Parcel; Reimbursement	24
D.	KCLS Development Agreement; Easements; Parking.....	24
Section 2.10	Temporary Construction Easement.....	25
Section 2.11	Restaurant/Retail Space Covenant.....	25
Section 2.12	Police Resource Center.....	26
Section 2.13	Other Approvals.....	26
A.	On-Street Parking Approval	26
B.	Other Off-site Infrastructure Improvements	27
C.	Other Approvals.....	27
D.	Evidence of Approvals.....	27
Section 2.14	Construction Contracts.....	27
Section 2.15	Financing Plan	28
Section 2.16	Evidence of Availability of Funds	29
Section 2.17	Performance and Payment Guarantee.....	29
ARTICLE 3	CITY RESPONSIBILITIES	29
Section 3.1	Permits and Approvals	29
A.	City Assistance.....	29
B.	City Retains Discretion	29
ARTICLE 4	DISPOSITION OF PROPERTY	30
Section 4.1	In General.....	30
Section 4.2	Opening Escrow.....	30
Section 4.3	Development Parcel Purchase Price	30
Section 4.4	Residual Land Value Analysis.....	30
A.	In General.....	30

B.	Adjusted Residual Land Value	30
C.	Process for Determination of Residual Land Value Analysis	31
1.	Submittal of Proposed Residual Land Value Analysis	31
2.	Construction Costs	31
3.	City Review	31
4.	Remedies	32
D.	Determination of Purchase Price	32
1.	Conditions Precedent	32
2.	Submission of Proposal	32
3.	City Response	33
4.	Remedies	34
E.	Purchase Price	34
F.	Minimum Residential Unit Value	34
Section 4.5	Escrow/Closing	35
A.	Selection of Escrow Agent	35
B.	Closing and Conveyance	35
C.	Conditions Precedent	35
1.	Delivery by City	35
2.	Delivery by Developer	36
3.	Other Instruments	36
4.	Other Conditions	36
Section 4.6	Title	37
A.	Condition of Title	37
B.	No Adverse Action	37
C.	Title Insurance	37
Section 4.7	Condition of the Property	37
A.	Disclosure; Due Diligence Review Period	37
Section 4.8	Title Review	38
A.	Review of Title Information	38
1.	Review Documents	38
2.	Developer’s Title Notice to City	39
3.	City’s Response	39
B.	“As Is” Purchase	40
C.	Survival	41
D.	Acknowledgment	41
E.	Developer’s Release of the City	41
F.	Scope of Release	41
G.	Costs of Escrow and Closing	42
1.	Prorations	42
2.	Title Insurance	42
H.	Recordation	42
I.	Delivery of Documents	43
J.	Real Estate Commissions	43
ARTICLE 5	CONSTRUCTION OF THE DEVELOPMENT	43
Section 5.1	Basic Obligations	43
Section 5.2	Developer-Performed Street, Utilities and Related Work	44
Section 5.3	Description of Developer Infrastructure Work	45

A.	Street Improvements	45
B.	Storm Water Utilities	45
C.	Other Utilities	45
D.	South 144 th Street.....	45
E.	Other Infrastructure Improvements.....	45
Section 5.4	Construction Pursuant to Plans	45
A.	General Requirement	45
B.	“As Built” Plans.....	46
Section 5.5	Estoppel Certificate of Completion	46
Section 5.6	Entry by the City.....	46
ARTICLE 6 OBLIGATIONS DURING AND AFTER CONSTRUCTION		47
Section 6.1	Applicability	47
Section 6.2	Additional Operating Covenants for Retained Improvements.....	47
A.	Expansion, Reconstruction or Demolition	47
Section 6.3	General Indemnity and Insurance	47
A.	General Indemnity	47
B.	Required Insurance Coverage.....	48
C.	General Contractor’s Insurance	48
D.	General Insurance Requirements	48
1.	In General.....	48
2.	Additional Insureds.....	48
3.	Additional Requirements	48
Section 6.4	Hazardous Materials	49
A.	Basic Developer Obligations	49
B.	Notification to City; City Participation.....	49
C.	Developer Indemnification	50
Section 6.5	Taxes.....	50
Section 6.6	Damage or Destruction to Developer Responsibility Area.....	50
Section 6.7	CC&Rs Obligations	50
ARTICLE 7 ASSIGNMENT AND TRANSFERS		51
Section 7.1	Definition of Transfer	51
Section 7.2	Purpose of Restrictions on Transfer.....	51
Section 7.3	Prohibited Transfers.....	51
Section 7.4	Permitted Transfers.....	51
Section 7.5	Other Transfers in City’s Sole Discretion.....	52
Section 7.6	Effectuation of Permitted or Otherwise Approved Transfers	52
ARTICLE 8 SECURITY FINANCING AND RIGHTS OF HOLDERS		53
Section 8.1	Security Financing Interests; Permitted and Prohibited Encumbrances	53
Section 8.2	Holder Not Obligated to Construct.....	54
Section 8.3	Notice of Default and Right to Cure.....	54
Section 8.4	Failure of Holder to Complete Development.....	54
Section 8.5	Right of City to Cure.....	54
Section 8.6	Right of City to Satisfy Other Liens	55
Section 8.7	Holder to be Notified	55

Section 8.8	Modifications	55
ARTICLE 9	DEFAULT AND REMEDIES.....	55
Section 9.1	Application of Remedies.....	55
Section 9.2	No Fault of Parties	55
A.	Bases For No Fault Termination.....	55
1.	Street Vacation Agreement.....	56
2.	Final Street Vacation Approval	56
3.	Site Plan Approval	56
4.	Boundary Line Adjustment.....	56
5.	Development Agreement	56
6.	CC&Rs	56
7.	Phased Development Plan.....	56
8.	Temporary Construction Easement.....	56
9.	Construction Contract	56
10.	Financing Plan	56
11.	Agreement with KCLS	56
12.	Design Document Approval	56
13.	Outdoor Plaza.....	57
14.	Commons	57
15.	Performance and Payment Bond.....	57
16.	Residual Land Value Analysis.....	57
17.	Purchase Price.....	57
18.	Mutual Agreement	57
B.	Termination Notice; Effect of Termination	57
Section 9.3	Fault of City	57
A.	City Event of Default.....	57
B.	Notice and Cure; Remedies	57
Section 9.4	Fault of Developer	58
A.	Developer Event of Default	58
B.	Notice and Cure; Remedies	60
1.	Prior to Closing.....	60
2.	Between Closing and Estoppel Certificate of Completion	60
3.	After Estoppel Certificate of Completion	61
Section 9.5	Right of Reverter.....	61
Section 9.6	Option to Repurchase, Reenter and Repossess	62
Section 9.7	Plans, Work Product and Studies.....	63
Section 9.8	Survival	63
Section 9.9	Rights and Remedies Cumulative.....	63
Section 9.10	Renegotiation	63
Section 9.11	Communication; Dispute Avoidance; Arbitration	64
A.	Communication and Discussion	64
B.	Arbitration.....	64
ARTICLE 10	GENERAL PROVISIONS	65
Section 10.1	Notices, Demands and Communications	65
A.	Method.....	65
1.	Addresses	65

2.	Special Requirement	66
Section 10.2	Excusable Delay (Force Majeure)	66
Section 10.3	Inspection of Books and Records	66
Section 10.4	Title of Parts and Sections	67
Section 10.5	Non-Liability of Officials, Employees and Agents	67
Section 10.6	Time of the Essence; Calculation of Time.....	67
Section 10.7	Applicable Law; Interpretation; Fair Construction.....	67
Section 10.8	Severability	67
Section 10.9	Legal Actions; Venue	67
Section 10.10	Binding Upon Successors; Covenants to Run With Land	68
Section 10.11	Parties Not Co-Venturers	68
Section 10.12	Provisions Not Merged With Deed.....	68
Section 10.13	Entire Understanding of the Parties	68
Section 10.14	Approvals	69
A.	City Actions	69
B.	Standard of Approval.....	69
Section 10.15	Authority of Developer.....	69
Section 10.16	Amendments	69
Section 10.17	Multiple Originals; Counterparts	69
Section 10.18	Operating Memoranda	70
Section 10.19	Good Faith and Reasonableness	70
Section 10.20	Successors and Assigns.....	70
Section 10.21	Estoppel Certificates	70
Section 10.22	Waiver.....	71
Section 10.23	Rights and Remedies Cumulative.....	71
Section 10.24	Discrimination.....	71
Section 10.25	Nonwaiver of Governmental Rights	71

EXHIBITS

Exhibit A	General Description of the Property
Exhibit A-1	Legal Description of the Property
Exhibit B	Depiction of the Property
Exhibit C	Form of Statutory Warranty Deed
Exhibit D	Phased Development Plan approved pursuant to Section 2.4 <i>(to be inserted)</i>
Exhibit E	Street Vacation Agreement <i>(to be inserted)</i>
Exhibit F	Preliminary Site Plan
Exhibit F-1	Approved Site Plan <i>(to be inserted)</i>
Exhibit G	Approved Development Agreement in conformance with Section 2.7 of this Agreement <i>(to be inserted)</i>
Exhibit H	CC&Rs approved pursuant to Section 2.8(E) <i>(to be inserted)</i>
Exhibit I	Temporary Construction Easement approved pursuant to Section 2.10 <i>(to be inserted)</i>
Exhibit J	Construction Contracts approved pursuant to Section 2.14(A) <i>(to be inserted)</i>
Exhibit K	Financing Plan approved pursuant to Section 2.15 <i>(to be</i>

- inserted*)
- Exhibit L KCLS Development Agreement (*Section 2.9*) (*to be inserted*)
- Exhibit M Police Resource Center Agreement (*Section 2.12*) (*to be inserted*)
- Exhibit N Statement of Purpose and Design for the Outdoor Plaza pursuant to Section 2.8(B) (*to be inserted*)
- Exhibit O Statement of Purpose and Design for the Commons pursuant to Section 2.8(C) (*to be inserted*)
- Exhibit P Performance and Payment Guarantee pursuant to Section 2.17 (*to be inserted*)
- Exhibit Q Residual Land Value Analysis approved pursuant to Section 4.4 (*to be inserted*)
- Exhibit R Form of DDA Memorandum (*to be inserted*)
- Exhibit S Legal Description of benefited property pursuant to Section 2.6 (*to be inserted*)
- Exhibit T Parking Easement (*to be inserted*)
- Exhibit U Legal Description of 41st Avenue to be vacated (*to be inserted*)
- ATTACHMENT NO. 1 TO MEMORANDUM OF DDA Legal Description of the Property

DISPOSITION AND DEVELOPMENT AGREEMENT
FOR THE
TUKWILA VILLAGE DEVELOPMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this “Agreement”) is entered into and is effective as of the ____ day of _____, 2012 (the “Effective Date”) by and between the City of Tukwila, a municipal corporation operating under the laws of the State of Washington as a non-charter code city (the “City”), and Tukwila Village Development Associates, LLC, a Washington limited liability company (the “Developer”). The City and Developer are sometimes collectively referred to in this Agreement as the “Parties,” and individually as a “Party.” The Parties have entered into this Agreement with reference to the following facts:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Section 1.1 of this Agreement. The Parties intend to refer to those definitions in connection with their use in these Recitals. The Parties further intend that the meaning given terms in these Recitals shall have the same meaning throughout this Agreement.

B. The City of Tukwila owns approximately 164,000 square feet of land plus approximately 23,000 square feet of 41st Avenue right of way on the northeast corner of Tukwila International Boulevard plus approximately 90,000 square feet of land on the southeast corner of Tukwila International Boulevard, totaling approximately 6.4 acres. The City intends this Property to be used for a Development it calls Tukwila Village.

C. In 2007 the Tukwila City Council adopted the following vision statement for Tukwila Village:

Tukwila Village will be a welcoming place where all residents can gather and connect with each other. This mixed-use development will draw upon Tukwila’s strengths and include a library, a neighborhood police resource center, retail, restaurants, public meeting space, and an outdoor plaza. The Village may also include office, live/work, and residential space. This active, vibrant place will set high standards for quality and foster additional neighborhood revitalization and civic pride.

D. On March 30, 2011, the City issued a request for qualifications for a proposal to develop the Property and on June 6, 2011 the City Council selected Developer as the most qualified among the applicants to develop the Property.

E. The Parties’ intent is for the City to sell all of the City-owned Tukwila Village Property to Developer except for a portion on the northeast corner of the intersection of Tukwila International Boulevard and South 144th Street intended for a branch of the King County Library System (the “Library Parcel”).

F. Developer shall be allowed to transfer ownership of Development Parcels to Affiliates of Developer for purposes of facilitating the financing and Development of the Improvements for each of the Development Parcels.

G. Developer shall be allowed to transfer ownership of a Development Parcel to another single asset entity owned or controlled by Developer to facilitate the development and public use of an outdoor community plaza and indoor community commons (the "Plaza Parcel"), subject to certain commitments described herein to grant possession and use of such Plaza Parcel (and the improvements thereto) to a local community-based organization formed, facilitated or selected by the City and Developer.

H. The boundaries of the Library Parcel, the Development Parcels and the Plaza Parcel shall be confirmed pursuant to boundary line adjustments proposed by Developer and approved by the City. Developer shall submit the boundary line adjustment application or binding site improvement plan along with its initial design review application for City approval and it shall be recorded prior to issuance of the building permits.

I. As of the Effective Date, the City is the owner of the Property generally described in Exhibit "A" and depicted in attached Exhibit "B", and legally described in Exhibit "A-1".

J. The City and Developer propose to develop the Property generally in the manner described in the foregoing Recitals, and more specifically in the manner described and depicted in the Preliminary Site Plan attached hereto as Exhibit "F", and as follows. The Parties' intent is for the Development of the Property to consist of a mix of uses that serves the residents of the development, the surrounding neighborhood, and the entire City by providing a place where people can reside, gather and interact with each other. The Parties further intend that this Agreement shall be recorded, in the form of the DDA Memorandum, upon Closing and shall bind Developer and its successors and assigns and transferees and shall be a condition running with the land until such time at the Estoppel Certificate of Completion is issued, as to each Development Parcel, or the Agreement is otherwise terminated as to a particular Development Parcel.

K. Upon satisfaction of certain specified preconditions, the City will convey the Property (or individual Development Parcels thereof) to Developer and Developer will develop the Property (or individual Parcels thereof), consisting generally of the following uses and elements with the corresponding minimum areas or dwelling units:

1. Uses and Sizes:

a.	Office Space	20,000 square feet
b.	Police Resource Center	2,000 square feet
c.	Retail	11,000 square feet
d.	Indoor Community Commons	2,000 square feet

- | | | |
|----|-------------------------|------------------------|
| e. | Outdoor Community Plaza | 20,000 square feet |
| f. | Housing Units | 380 units ¹ |

2. Medical/Dental Office Space. Developer shall use its best efforts to secure a medical and dental clinic consisting of approximately 20,000 square feet to occupy the Office Space referenced above.

3. Library Space. The City shall use its best efforts to secure a 10,000 square foot library branch of the King County Library System for the Library Parcel, as hereinafter defined. Developer shall use its best efforts to coordinate development of the Property and the Library Parcel in cooperation with the King County Library System in a fashion that creates efficiencies for infrastructure improvements and such that the two properties function for vehicles and pedestrians as one integrated development.

4. Income Limits on Non-Age Restricted Housing. The Parties intend for the non-age restricted housing to meet the minimum income restrictions necessary to qualify for federally tax exempt bond financing. Accordingly, with respect to the housing units that are not age-restricted, to the extent necessary to meet the minimum qualifications for tax-exempt bond financing, approximately 20% of such units may be restricted to households earning 50% or less than the area median gross income. The balance of such non-age restricted housing units shall have no household income restrictions.

5. Income Limits on Age-Restricted Housing. The Parties intend for the age-restricted (i.e., “senior”) housing units to be available to a range of household incomes while enabling all of the housing units to qualify for a real property tax exemption and tax-exempt bond financing. The Parties also intend for a majority of the age-restricted housing units to qualify for federal low income housing tax credits. Accordingly, at least 20% of the age-restricted housing units shall have no household income restrictions and at least 30% of the age-restricted housing units shall either have no household income restrictions or be subject to household income restrictions not less than 80% of area median gross income. The balance of such age-restricted housing units may have household income restrictions not less than 50% of area median gross income. The housing units that are both age- and income-restricted may also have rent restrictions to the extent necessary to qualify for federal low income housing tax credits.

6. Other Uses. Beyond the minimum required uses identified in K(1) of the Recitals hereto, the Parties’ intend the Development to be allowed to include any uses that are allowed under the City’s zoning code.

L. Developer shall be allowed to develop the Property in up to four (4) separate phases; provided, however, the Plaza Parcel shall be developed in conjunction with the first Development Phase.

¹ At least seventy-five percent (75%) of the housing units shall be age-restricted (elderly housing) as defined under the applicable federal fair-housing laws.

M. The proposed Development is consistent with the City’s Comprehensive Plan and the Tukwila Village Vision statement and will promote the goals and objectives of the Comprehensive Plan to revitalize the area in and around Tukwila Village.

N. Developer has represented, and the City has determined, that Developer has the necessary experience, skill, and ability to carry out the commitments contained in this Agreement.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the City and Developer agree as follows:

ARTICLE 1
DEFINITIONS, EXHIBITS, SCHEDULE AND CC&Rs

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply:

“Affiliate” means, when used in connection with Developer, any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Developer, and “Affiliates” mean all such Persons.

“Agreement” means this Disposition and Development Agreement.

“Approved Construction Plans” means all plans and specifications in connection with the construction of the Improvements associated with a Development Phase, including, but not limited to, final architectural drawings and specifications, final structural engineering plans, final civil engineering plans, final Landscaping plans and specifications, and typical materials, finishes and colors for all residential, retail, commercial and Plaza components, upon which the City is ready to issue all applicable site development, engineering and building permits.

“Approved Development Loan” means, as to a Development Phase, any construction or permanent loan approved by the City as part of the Approved Financing Plan pursuant to Section 2.14, and that requires all proceeds of such loan to be used exclusively for acquisition of the Development Parcels, site development and/or the construction of Improvements for the Development Phase.

“Approved Site Plan” means the site plan for the Development as approved by the City through the Board of Architectural Review (“BAR”) design review process.

“Boundary Line Adjustment” or “BLA” means any revision to the legal description of one or more lots or parcels included in the Property through an approved legal process of a boundary line adjustment, lot consolidation, binding site plan, or any combination thereof.

“Business Day” means a day on which the offices of the City are open to the public for business.

“Casualty” means any damage or destruction to the Developer Responsibility Area, not authorized in this Agreement, in excess of Fifty Thousand Dollars (\$50,000).

“CC&Rs” means the covenants, conditions and restrictions recorded at the time of conveyance of each Development Parcel relating to the rights, duties and obligations to operate and maintain the Plaza Parcel, as more specifically set forth in Section 2.8(E) hereof.

“City” means the City of Tukwila, a municipal corporation operating as a non-charter code city under the laws of the state of Washington. Those acting on behalf of the City may include the Mayor, City employees and authorized consultants.

“City Council” means the Tukwila City Council.

“City Event of Default” has the meaning given in Section 9.3.

“Closing” means the closing of escrow through which the City will convey its fee estate in a Development Parcel or Parcels to Developer or in the Library Parcel to the KCLS.

“Closing Date” means the date of Closing of escrow with respect to a Development Parcel or the Library Parcel.

“Commons” means the building (or portion thereof) located within boundaries of the Plaza Parcel that is leased, or intended to be leased, to the Community Organization, as more specifically described in Section 2.8.

“Construction Contract” means the fixed price or guaranteed maximum price construction contract between Developer and the General Contractor for construction of the Improvements associated with a Development Phase, as submitted by Developer and approved by the City pursuant to Section 2.14 hereof.

“Construction Documents” means, collectively, all Approved Construction Plans upon which Developer, and Developer’s several Contractors, shall rely in connection with the construction of the Improvements associated with a Development Phase, and the Construction Schedule.

“Construction Schedule” means the schedule for construction of all Improvements associated with a particular Development Phase.

“Contaminant(s)” means all hazardous substances as defined under the Environmental Standards.

“Contractors” means, collectively, the General Contractor and any other contractors or subcontractors retained directly or indirectly by Developer, the General Contractor, or any Tenant in connection with the construction of the Improvements associated with the Development, including the initial tenant improvements within the Development. The term “Contractors” shall not include any contractor or subcontractor separately retained

by the owner of a Residential Unit following the sale of such Residential Unit by Developer.

“DDA Memorandum” means the memorandum of this Agreement, substantially in the form attached hereto as Exhibit “R”, to be recorded as provided in Section 4.5(C)(1)(f) hereof.

“Deed” means the statutory warranty deed by which the City will convey its fee estate in a Development Parcel to Developer or the Library Parcel to the KCLS at the Closing thereof. The form of such Deed is attached hereto as Exhibit “C”.

“Deposit” means the good faith deposit provided by Developer pursuant to Section 2.2 in the amount of One Hundred Thousand Dollars (\$100,000), and specifically does not include interest that is earned on the Deposit.

“Design Guidelines” and “Design Standards” means collectively, the design criteria, standards and specifications set forth in this Agreement, the Development Agreement, the City of Tukwila Land Use Regulatory Code, the approved Phased Development Plan, the CC&Rs and other legal requirements that affect the Development.

“Developer” means Tukwila Village Development Associates, LLC, a Washington limited liability company, or any successor thereto as permitted pursuant to the terms of this Agreement. With reference to any covenant set forth herein, “Developer” shall also mean and include any subsequent purchaser or assignee of an interest in all or part of the Retained Improvements.

“Developer Event of Default” has the meaning given in Section 9.4.

“Developer-Performed Additional Site Work” shall mean and refer to the Developer work described in Section 5.3 hereof.

“Developer Responsibility Area” means all portions of the Property owned or controlled by Developer from time to time, including all portions occupied by, in the possession of, or subject to control by Developer pursuant to the Temporary Access Easement described in Section 2.10 hereof. For purposes of this Agreement, all portions of the Plaza Parcel under the control of the Community Organization from time to time, including without limitation, the Parking Improvements and the Street Improvements, shall be deemed to be controlled by Developer and, consequently, shall be deemed to be a part of the Developer Responsibility Area.

“Development” means and refers to the Tukwila Village development in its entirety including all Improvements to be constructed and developed on or in connection with the Property by Developer or its Contractors in accordance with this Agreement. The proposed Development is generally described in Recital J, and is more specifically described and depicted in the Preliminary Site Plan attached hereto as Exhibit “F” and the Approved Site Plan attached hereto as Exhibit “F-1”.

“Development Impact Fees” means the development impact fees imposed by the City pursuant to Chapter 82.02 RCW in connection with the development of the Property.

“Development Parcels” shall mean and refer to each parcel or lot comprising the Property either as legally described in Exhibit “A-1”, or as may hereafter be altered or adjusted or combined pursuant to a Boundary Line Adjustment.

“Development Phase” shall mean and refer to the planned development of a separate Development Parcel or Parcels comprising a portion of the Property wherein such Development Parcel or Parcels will be permitted and developed by Developer, or an Affiliate thereof, as a single project and pursuant to a common plan of financing and the approved Phased Development Plan. A Development Phase may include related off-site utility, transportation or similar improvements.

“Dispute” shall mean an issue or controversy that arises between the Parties concerning the observance, performance, interpretation or implementation of any of the terms, provisions, or conditions contained in this Agreement or the rights or obligations of either Party under this Agreement.

“Effective Date” means the date set forth in the first paragraph of this Agreement.

“Environmental Standards” mean all federal, state and local environmental Laws and ordinances and all rules and regulations promulgated thereunder, whether currently in effect or enacted or amended from time to time in the future, including but not limited to the Endangered Species Act (“ESA”), the Resource Conservation and Recovery Act (“RCRA”), the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), the Clean Air Act as amended (42 U.S.C. 1857, (c)-8), the Clean Water Act, Section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1318), the Toxic Substances Control Act, Hazardous Waste Management Act (Ch. 70.105 RCW) and state dangerous waste regulations (Ch. 173.303 WAC), and the Model Toxic Substances Control Act (“MTCA” RCW 70.105.D, et seq. and Ch. 173.340 WAC), and also including but not limited to any guidelines, levels and standards currently in effect or enacted or amended from time to time in the future by the applicable federal, state or local regulatory authority for addressing any contamination of any sort.

“Escrow Agent” means such title company or qualified escrow agent upon which the Parties may subsequently agree, with which an escrow shall be established by the Parties to accomplish the Closing as provided in this Agreement.

“Estoppel Certificate of Completion” means a certificate defined in Section 5.5 hereof.

“Financing Plan” means, as to each Development Phase, the following documents to be submitted by Developer for City approval in accordance with Section 2.14 hereof:

A development budget (including all acquisition costs, direct or “hard” costs, indirect or “soft” costs, and financing costs) for acquiring and developing the Development Parcel or Parcels and constructing the Improvements associated with a Development Phase. The development budget shall be based on the

Approved Construction Plans. At City's request, the development budget shall also include as supporting documentation the same development budget information provided to lenders and investors for procuring the debt and equity funds including (but not limited to) the Construction Contract.

A description of any joint ventures, partnerships, financing arrangements or conveyances that Developer proposes to enter into in order to provide funds for acquiring, developing and constructing the applicable Development Phase.

A copy of all commitments obtained by Developer to provide financing as reflected in the development budget, including interim construction financing, permanent financing, and other financing from external sources (including proposed joint ventures or partnerships), certified by Developer to be true, accurate and complete.

Evidence in form satisfactory to the City demonstrating that Developer and other equity investors or partners and lenders for all sources of equity or loans identified in the development budget have sufficient capital or funds available to fulfill the commitments identified in the development budget.

"Force Majeure" means the occurrence of one or more of those events described in Section 10.4 of this Agreement, permitting an extension of time for performance of obligations under this Agreement.

"General Contractor" means a licensed, experienced and financially responsible general contractor with whom Developer has entered into a Construction Contract for construction of the Improvements associated with a Development Phase.

"Improvements" means all buildings, structures, improvements and fixtures now or hereafter rehabilitated, placed or constructed in, under or upon the Property, including the Landscaping, and all driveways, roadways, sidewalks, public amenities, fences, paved areas, utility distribution facilities, lighting, signage and other infrastructure or frontage improvements to be constructed or installed by Developer, or others, on the Property.

"Indemnified Parties" means, collectively, the City, and its officers (elected and appointed), employees, attorneys, agents, and successors and assigns.

"King County Library System" or "KCLS" means the King County Rural Library District.

"Known Contaminant" means any Contaminant, (i) that is discovered by Developer during pre-Closing site investigation; (ii) that is mentioned in any Review Materials as actually or possibly present in, under or upon a Development Parcel, or any part of the Developer Responsibility Area, and (iii) the presence of which may reasonably be inferred from (1) the presence of a mentioned Contaminant (as, for example, the possible presence of contaminated soil may be reasonably inferred from the presence of an underground storage tank), or (2) the possible degradation of a mentioned Contaminant; provided, however, that the term "Known Contaminant" shall not include any

Contaminant that is introduced in, under, upon or emanating from a Development Parcel following the Closing.

“Landscape” shall mean the landscaping elements of all outdoor public or private Improvements, including, without limitation, plants, trees and other vegetation, “hardscape” surfaces, fences, lighting, planters, trellises, seating, furniture, fixtures and artwork.

“Later Discovered Pre-Conveyance Contaminants” shall mean any Contaminants that are not Known Contaminants but that existed in, under, upon or emanating from a Development Parcel prior to the Closing.

“Law(s)” shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, authorizations, environmental standards, orders, decrees and requirements of all federal, state, City and municipal governments, the departments, bureaus or commissions thereof, authorities, boards or officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions having or acquiring jurisdiction over all or any portion of the Property, including the City acting in its governmental capacity, or other legal requirements. References to “Laws” shall be interpreted broadly to include government actions, however exercised, and shall include laws, ordinances and regulations now in force or hereinafter enacted or amended.

“Library Parcel” means a portion of the Property located at the northeast corner of the intersection of Tukwila International Boulevard and South 144th Street, as more specifically defined in Section 2.9(A) hereof, which the City intends to be developed with a branch of the King County Library System.

“Mayor” means the Mayor of the City of Tukwila, or his or her designee.

“Permitted Exceptions” means the following liens, encumbrances, easements, encroachments, clouds, conditions, rights of occupancy or possession, as they may relate to the condition of title to the Property or to an individual Development Parcel:

applicable building and zoning Laws and regulations;

the provisions of this Agreement as evidenced by the DDA Memorandum;

the provisions of the CC&Rs pursuant to Section 2.8(E) of this Agreement;

the provisions of any easements granted by Developer and/or City to the KCLS pursuant to Section 2.9(D) hereof as a condition of the KCLS Development Agreement between Developer and the KCLS;

the provisions of any easements granted by Developer and/or City pursuant to Section 2.6 hereof as a condition of the Street Vacation Agreement;

any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Statutory Warranty Deed;

liens, encumbrances, easements, encroachments, clouds, conditions, rights of occupancy or possession shown as exceptions on the title report and which are Permitted Exceptions allowed pursuant to Section 4.8 hereof; and

any other matters permitted by Developer in accordance with Section 4.8 hereof.

“Person” means and includes any individual, corporation, partnership, association, joint-stock company, limited liability company, political subdivision, public corporation, taxing districts, trust, or any other legal entity.

“Plaza” means the outdoor portion of the Plaza Parcel, excluding the Commons, as shown on the Preliminary Site Plan or, if revised, as shown on the Approved Site Plan, and as more specifically described in Section 2.8 hereof.

“Plaza Parcel” means the portion of the Property identified as the Plaza Parcel as shown on the Preliminary Site Plan or, if revised, as shown on the Approved Site Plan. The Plaza Parcel includes the Plaza and the Commons and is more specifically described in Section 2.8 hereof.

“Preliminary Plans” means, as to each Development Phase, the architectural and/or engineering plans, specifications, drawings, elevations, and related documents for the construction or installation of the Improvements.

“Preliminary Site Plan” means the site plan attached hereto as Exhibit “F.”

“Property” shall mean and include, collectively, those lots and parcels described in Recitals E and I, and more particularly described and shown in the attached Exhibit “A-1” (Legal Description) and Exhibit “B” (Depiction of the Property), and shall mean and include such lots and parcels as altered or combined pursuant to a BLA pursuant to Section 2.5 hereof. “Property” shall not include the Library Parcel unless and until the Library Parcel is released by the City to Developer pursuant to Section 2.9(B) hereof.

“Proposed Site Plan” means the site plan submitted by Developer to the BAR in connection with a design review application for a Development Phase and as revised by successive iterations prior to building permit approval for the Development Phase by the City. “Purchase Price” shall mean the full dollar amount of the purchase price including the allocable portion of the Deposit as determined in accordance with Section 2.2 hereof, plus the amount of readily available funds in U.S. currency that Developer, pursuant to Section 4.4 of this Agreement, shall be required to pay into escrow as the total amount of the consideration to be paid to the City for the purchase of an individual Development Parcel.

“Release” has the same meaning as that term is defined pursuant to the Model Toxic Substances Control Act (“MTCA” RCW 70.105D.020(25)) as now or hereafter amended.

“Remediation” or “Remedial Action” means any action or expenditure to identify, eliminate, or minimize any threat posed to human health or the environment by

Contaminants or other environmental conditions in, under or upon the Property, consistent with the applicable Laws and Environmental Standards in accordance with this Agreement, including (if applicable) a Site-Specific Clean-up Action Plan (“SCAPS”) filed with and approved by the Washington State Department of Ecology.

“Retained Improvements” means, all Improvements upon the Property, in whole or in part, exclusive of those improvements that will be conveyed to the City or to the KCLS and any utility system improvements constructed or installed by or on behalf of utility providers (e.g., sanitary sewer, water, natural gas, electrical power, telecommunications, internet and cable TV); and exclusive of Improvements upon the Library Parcel (if conveyed to the KCLS).

“Site” means any physically separate and distinct Parcel or Parcels of the Property which Parcel or group of Parcels is proposed as the location for development or for some other activity which requires a permit or approval pursuant to TMC Titles 16, 17 or 18.

“Term” means the term of this Agreement, commencing on the Effective Date and ending on the earlier of (1) the completion of the performance of all obligations of the Parties pursuant to this Agreement, or (2) the date of any termination of this Agreement in accordance with the provisions hereof.

“Transfer” has the meaning given in Section 7.1 hereof.

Section 1.2 Exhibits.

The following exhibits are attached to (or upon preparation and/or approval) will be attached to) and incorporated into this Agreement as though fully set forth herein:

Exhibit A	General Description of the Property
Exhibit A-1	Legal Description of the Property
Exhibit B	Depiction of the Property
Exhibit C	Form of Statutory Warranty Deed
Exhibit D	Phased Development Plan approved pursuant to Section 2.4 (<i>to be inserted</i>)
Exhibit E	Street Vacation Agreement (<i>to be inserted</i>)
Exhibit F	Preliminary Site Plan
Exhibit F-1	Approved Site Plan (<i>to be inserted</i>)
Exhibit G	Approved Development Agreement in conformance with Section 2.7 of this Agreement (<i>to be inserted</i>)
Exhibit H	CC&Rs approved pursuant to Section 2.8(E) (<i>to be inserted</i>)
Exhibit I	Temporary Construction Easement approved pursuant to Section 2.10 (<i>to be inserted</i>)
Exhibit J	Construction Contracts approved pursuant to Section 2.11(A) (<i>to</i>

	<i>be inserted)</i>
Exhibit K	Financing Plan approved pursuant to Section 2.14 <i>(to be inserted)</i>
Exhibit L	KCLS Development Agreement <i>(Section 2.9) (to be inserted)</i>
Exhibit M	Police Community Resource Agreement <i>(Section 2.12) (to be inserted)</i>
Exhibit N	Statement of Purpose and Design for the Outdoor Plaza pursuant to Section 2.8(B) <i>(to be inserted)</i>
Exhibit O	Statement of Purpose and Design for the Commons pursuant to Section 2.8(C) <i>(to be inserted)</i>
Exhibit P	Personal Guarantee pursuant to Section 2.11(D) <i>(to be inserted)</i>
Exhibit Q	Residual Land Value Analysis approved pursuant to Section 4.4 <i>(to be inserted)</i>
Exhibit R	Form of DDA Memorandum <i>(to be inserted)</i>
Exhibit S	Legal Description of benefited property pursuant to Section 2.6 <i>(to be inserted)</i>
Exhibit T	Parking Easement <i>(to be inserted)</i>
Exhibit U	Legal Description of 41 st Avenue to be vacated <i>(to be inserted)</i>

ARTICLE 2
DEVELOPER PREDISPOSITION REQUIREMENTS

Section 2.1 Conditions Precedent.

As conditions precedent to the Closing, the conditions set forth in this Article 2 must first be met by the times specified for such conditions, subject to Force Majeure. If a recognized Force Majeure event results in a delay such that satisfaction of all conditions set forth in this Article 2 will require more than fifteen (15) months from the Effective Date, then the Parties shall confer in good faith to seek mutually acceptable actions to proceed with the development of the Property under the circumstances of such delay; provided, however, that this Agreement may not be terminated without the mutual consent of the Parties if the satisfaction of all conditions in this Article is delayed beyond fifteen (15) months from the Effective Date as a result of a recognized Force Majeure event.

Section 2.2 Deposit.

A. Delivery of Deposit. No later than thirty (30) days following the Effective Date, Developer shall deliver to the City, in the form of readily available funds, the sum total of **One Hundred Thousand (\$100,000) Dollars** (the “**Deposit**”) as a good faith deposit to be held by the City. The City shall promptly deposit the amount in a separate account, such as an account in which the City typically invests funds on a short-term basis.

B. Refund of Deposit. Upon notice of termination of this Agreement pursuant to Section 9.2(B) of this Agreement and upon demand made to the City in writing by Developer and received within sixty (60) days following the Effective Date, the Deposit shall be refunded to Developer in full. Thereafter, the portion of the Deposit available for refund shall decrease by Ten Thousand Dollars (\$10,000) for each additional consecutive thirty (30) day period until no portion of the Deposit is available for refund. For example, the refundable portion of the Deposit for a notice of termination and demand received by the City on the 75th day following the Effective Date would be Ninety Thousand Dollars (\$90,000) and on the 105th day following the Effective Date would be Eighty Thousand Dollars (\$80,000). At such time as the total Deposit becomes non-refundable, the City shall have no obligation to return any remaining balance of the Deposit to Developer except in the case of a City Event of Default.

C. Application of Deposit. The Deposit, unless refunded as set forth in subsection (B) above, shall be held, maintained and reserved by the City for the term of this Agreement to be applied to the Purchase Price of each of the Development Parcels as set forth herein. At the time of Closing as to each Development Parcel, the City shall apply the allocable portion of the Deposit to the Purchase Price of the Development Parcel. The allocable portion of the Deposit shall be expressed as a percentage and shall be determined based upon the gross square footage of the Development Parcel which is the subject of the conveyance (the “**Subject Development Parcel**”) in proportion to the total combined gross square footage of all of the Development Parcels (the “**Combined Development Parcels**”). The allocable percentage of the total combined gross square footage of the Combined Development Parcels represented by the gross square footage of the Subject Development Parcel shall be multiplied by the total Deposit amount to determine the portion of the Deposit allocable to the Purchase Price of the Subject Development Parcel. For example, if the total combined gross square footage of the Combined Development Parcels equals 250,000 square feet and the gross square footage of the Subject Development Parcel equals 50,000 square feet, the Subject Development Parcel represents 20% of the total combined gross square footage of the Combined Development Parcels. The Deposit amount of \$100,000 would be multiplied by 20% to arrive at \$20,000 as the allocable portion of the Deposit to be applied to the Purchase Price of the Subject Development Parcel ($\$100,000 \times 20\% = \$20,000$).

D. Termination/Revocation. In the event of termination, expiration or revocation of this Agreement for any reason other than a City Event of Default, the City shall be entitled to retain any remaining balance of the Deposit (including any interest earned thereon) to defray a portion of the City’s costs under this Agreement and to compensate the City for the lost opportunity of making available the Development Parcels for an alternative development during the Term of this Agreement.

Section 2.3 Site Plan and Design Review Submittals.

A. Site Plan Submittal and Approval. Developer shall, on or before the 90th day following the Effective Date, submit an application to the City for architectural design review with respect to the first Development Phase in accordance with the requirements of TMC Ch. 18.60, including a Proposed Site Plan. The Proposed Site Plan submitted for review and approval with the application shall substantially conform to the Preliminary Site Plan attached hereto as Exhibit “F” and shall include, conform to and identify as to each proposed

Development Parcel, the information required pursuant to TMC Ch. 18.60 and the following elements:

1. Lines marking the boundaries of the existing lots(s) or parcel(s), provided that any existing lot boundary to be eliminated or altered should be a dashed line and so noted.
2. Locations of existing and proposed public or private roads and easements, including private access easements.
3. Location of proposed new property lines and numbering of each lot or parcel.
4. Location, dimension and purpose of existing and proposed easements and encumbrances, including but not limited to parking easements.
5. Location of any proposed dedications.
6. Description, location and size of existing and proposed utilities, storm drainage facilities and roads to serve the Property.
7. Expected location and setbacks of proposed new buildings, parking areas and driveways.

The Proposed Site Plan, if approved through the City's design review process, will become the "**Approved Site Plan**"; provided that, the Proposed Site Plan may be modified by Developer during design review pursuant to TMC Ch. 18.60 in response to issues raised by the Board of Architectural Review. Upon approval pursuant to TMC Ch. 18.60, the Approved Site Plan shall be incorporated in this Agreement as Exhibit "F-1". Development of the Property shall conform to the Approved Site Plan, any conditions attached thereto, and any approved amendments thereto.

B. Design Review Application Submittal and Approval. Each application submitted to the City for architectural design review for a proposed Development Parcel in accordance with the requirements of TMC Ch. 18.60, shall include any modifications to the Proposed Site Plan, the information required pursuant to TMC Ch. 18.60 and the following elements:

1. Conceptual floor plans, floor areas and elevations of proposed new buildings and other structures.
2. Conceptual Landscaping plan.
3. A table of uses, elements, floor areas and housing units consistent with Section "K" of the Recitals.
4. Identification of facilities in conformance with Section 2.11 (Restaurant/Retail Space Covenant) of this Agreement.
5. Identification of facilities in conformance with Section 2.12 (Police Resource Center) of this Agreement.

C. Proposed Site Plan Conformance. Prior to submittal of the Proposed Site Plan for design review, Developer shall submit the Proposed Site Plan to the City for the Mayor's review and approval of conformance with the Preliminary Site Plan. In the event that the Mayor determines that the Proposed Site Plan does not substantially conform to the Preliminary Site Plan, then at the request of Developer, the Proposed Site Plan shall be submitted to the City Council for its review and approval of the Proposed Site Plan as an amendment to this Agreement.

Section 2.4 Phasing; Development Parcels.

A. In General. Developer shall have the right to develop the Property in multiple Development Phases to facilitate financing and ownership, to aid in the timing of and sequencing of construction, and to attain flexibility to adjust to market demand and other factors. In the event that Developer intends to develop the Property in multiple Development Phases, Developer shall submit its plan for phased development to the City (the “**Phased Development Plan**”) for its review and approval prior to, or contemporaneous with, submittal of its proposed BLA application to the City. The Development Parcels that are associated with each Development Phase, including the Plaza Parcel, may be owned, operated and managed separately, although initially developed under the control of Developer or an Affiliate.

B. City Review and Approval. The City shall have the right to review and approve the Phased Development Plan, including the development of the Plaza Parcel, for the purpose of ensuring compliance with this Agreement and to ensure that the Additional Development Work associated with each proposed Development Phase, as described at Section 5.2 of this Agreement, will fully support the Improvements associated with each Development Phase in the event that future Development Phases are delayed or not completed by Developer. The Phased Development Plan shall include and identify:

1. A summary of the site plan and design review elements listed in Section 2.3 (Site Plan and Design Review Submittals) to be included within each Development Phase;

2. A proposed Construction Schedule and sequencing for the acquisition of the affected Development Parcels and development of the Improvements for each Development Phase, including Developer Additional Work associated with each Development Phase (e.g., infrastructure improvements, utilities, driveways and Landscaping).

C. Plaza Parcel; First Development Phase. Developer shall develop the Plaza Parcel contemporaneously with, and as part of, the development of the first Development Phase.

D. Additional Approvals. The City shall have the right to require and approve easements for utilities, vehicular access, pedestrian access, shared parking, and shared maintenance for each Development Phase to ensure that the entire Development functions as an integrated whole even if the Development Parcels and/or Development Phases come under separate ownership and management.

E. Library Parcel; Timing. The City shall use its best efforts to require the KCLS to submit a proposed site plan with respect to the Library Parcel and a conceptual architectural design for the proposed library branch building by the time Developer submits a design review application for the first Development Phase. This is to ensure the City and Developer have information on how the site plan and the architectural design for the proposed library branch building will be compatible with the overall Development, and in particular, the Improvements on the Development Parcels adjacent to the Library Parcel.

Section 2.5 Boundary Line Adjustment.

A Boundary Line Adjustment (“BLA”) will be required to alter and/or combine the existing boundaries of certain Parcels comprising all or part of the Property to create and define the Plaza Parcel and Library Parcel, and the Development Parcels to accommodate Developer’s proposed Development Phases as approved pursuant to Section 2.4 hereof. Developer shall, in conformance with Section 2.9(D) hereof, as soon as practicable after the Effective Date, work with the KCLS to establish the proposed boundaries of the Library Parcel, submit an application to the City pursuant to TMC Ch. 17.08 for a proposed BLA. Prior to submittal of the application for a BLA, Developer shall submit its proposed BLA application to the Mayor for review and approval for consistency with this Agreement. Such approval shall be in writing and shall, for purposes of TMC 18.06.045, constitute the City’s designation of Developer as applicant seeking approval of the BLA. Final approval of the BLA in accordance with TMC 18.06.045 shall not be recorded until Closing on the sale of the Development Parcels for the first Development Phase. Upon final approval of the BLA, Exhibits “A” and “B” shall be amended to conform to the revised legal descriptions and depictions of the Development Parcels resulting from the BLA.

Developer shall be responsible for all costs associated with applying for and obtaining approval of a BLA pursuant to TMC Ch. 17.08, although an allocable portion of such costs shall be taken into account in the Residual Value Analysis for each Development Parcel.

Section 2.6 Street Vacation.

A. Legislative Action. 41st Avenue is a public right of way that a portion of the Property and is abutted by property owned by a third party and described in Exhibit “S” attached hereto. The City and Developer acknowledge and agree that Developer’s obligations as set forth in Section 4.4 hereof to purchase the Property are contingent upon Final City Council Approval of vacation of that portion of 41st Avenue as depicted and described on Exhibit “U” attached hereto (“**Street Vacation**”). Upon Final City Council Approval of such vacation, that vacated portion of 41st Avenue shall become available for development as part of the Property.

B. Final Approval; Meaning. “**Final City Council Approval**” shall mean thirty (30) days following the effective date of the City Council ordinance granting the Street Vacation; provided that, in the event that such Final City Council Approval is subject to challenge in a court of competent jurisdiction, such challenge shall be considered an event of Force Majeure and during that time period, such obligations of Developer shall remain contingent until such time as a final non-appealable decision is entered by a court of competent jurisdiction either upholding the street vacation or otherwise dismissing the action. In the event that Final City Council Approval of the Street Vacation is materially altered by a final non-appealable decision of a court of competent jurisdiction, such that the materials rights, duties and obligations of either Party are altered, the Parties agree to meet in good faith to negotiate amendments to reform this Agreement, upon such terms and conditions as are mutually agreeable by the Parties, so as to carry out the Party’s intent as expressed herein.

C. Street Vacation Agreements; Retained Easements. City and Developer acknowledge that certain third parties with real property interests near or abutting that portion of 41st Avenue to be vacated, and utility providers with utility facilities located within that portion of 41st Avenue to be vacated, may be impacted by vacation of 41st Avenue. The City and

Developer acknowledge and agree that certain third party agreements may be necessary to accommodate such third parties as a condition of Final City Council Approval of the Street Vacation (hereinafter “**Street Vacation Agreement(s)**”). The City and Developer further acknowledge and agree that vacation of 41st Avenue will require a reservation of certain temporary and permanent easements over, under and across the Development Parcels to accommodate relocation of existing utilities and to provide access to and from the public roadways. For example, it is anticipated that the Street Vacation must include a reservation of a temporary non-exclusive access easement over and across 41st Avenue for the benefit of the property described in Exhibit “S”. It is further acknowledged and agreed, that such Street Vacation Agreements may provide for (i) certain Improvements to accommodate both temporary and permanent access over and across the Development Parcels, (ii) easements for conveyance and connection to stormwater system improvements to facilitate the collection and conveyance of storm and surface water from adjacent property, and (iii) other accommodations to facilitate approval of such Street Vacation Agreements. Upon the Effective Date, the City and Developer agree that they will begin to work cooperatively with each other to secure from the adjacent property owners such Street Vacation Agreements as are reasonable and necessary to facilitate and expedite the Street Vacation of 41st Avenue and will negotiate such reservation of rights and easements upon the Property reasonably necessary to accommodate the terms and conditions of such Street Vacation Agreements.

The City and Developer shall, in conjunction with the Street Vacation and the Street Vacation Agreements, mutually agree upon the allocation of the costs associated with City and/or Developer obligations under the Street Vacation Agreements.

Section 2.7 Entitlements and Vesting.

A. Development Agreement. The Parties desire to enter into a development agreement pursuant to RCW 36.70B.170 et. seq. (the “**Development Agreement**”) to set forth the development standards and other provisions that shall apply to and govern and vest the development, use and mitigation of the development of the Property for the duration specified in such Development Agreement. The Parties intend that Developer’s obligation to acquire and develop the Property, in whole or in part, and the City’s obligation to convey the Property, in whole or in part, pursuant to the terms and conditions of this Agreement, shall be contingent upon and subject to the Development Agreement providing for the following:

1. Additional Height. The maximum building heights for buildings A and D as shown on the Preliminary Site Plan shall be seventy (70) feet.

2. Design Review. The Proposed Site Plan, the proposed design of the Plaza and the Commons, and the proposed design of each building or other structure on each Development Parcel, shall be subject to approval by the BAR under the rules and regulations forming the City’s design review approval process and development standards (“**Design Review**”). The design standards and review criteria applicable to the Property shall, in addition to the criteria set forth at TMC 18.60.050 and the City’s design and permitting rules and regulations, include criteria consistent with the following:

a. Vision Statement. The City’s Vision Statement for Tukwila Village.

b. Focal Point Design. The Preliminary Site Plan represents the relationship of proposed new buildings to the Plaza and the neighborhood and, as such, focal points, such as prominent building corners, must have a defined architectural expression and visual interest. By way of example and not limitation, such defined architectural expression and visual interest may include a rounded or chamfered wall, a tower, transparency, or architectural lighting at night.

c. Buildings Along Eastern Boundary. If any portion of buildings B or E as shown on the Preliminary and Proposed Site Plan is proposed to be located within 30 feet of an adjacent property that is zoned LDR, MDR, or HDR, the City may require portions of the building to have greater setbacks and/or lower height limits than allowed under the City's existing zoning codes or development standards, provided that the average setbacks and/or height limits allowable shall be consistent the City's existing zoning codes or development standards. The City may encourage building facade modulation and/or height modulation in order to reduce the visual impact on adjacent properties, but such modulation shall not be mandated solely to reduce density that is otherwise allowable under the City's existing zoning codes or development standards and that is consistent with the intent of the Parties under the Development Agreement.

d. Minimum Interior Height. Non-residential uses at street level shall have a floor-to-floor height of at least 15 feet. This height shall be as measured from the primary entry of the tenant space(s) intended to occupy the street level.

e. Landscaping Standards. Normal landscaping standards and requirements under the City's existing zoning codes and development standards shall apply to the Property, provided that the specific Landscaping standards and requirements set forth in the corresponding "Statement of Purpose and Design" for the Plaza and the Commons shall be reflected in the design review submittals for the Plaza Parcel.

B. Condition Precedent. City Council approval of the contemplated Development Agreement upon terms and conditions mutually agreed to by the Parties is a condition precedent to any obligation of Developer herein to purchase any of the Development Parcels. The Parties agree that, upon the Effective Date, representatives thereof shall meet in good faith to negotiate mutually agreeable terms and conditions of the contemplated Development Agreement that, upon approval by the City Council and execution by the City and Developer in accordance with the applicable requirements and procedures set forth in the City's Municipal Code and consistent with applicable state law, shall be attached hereto and incorporated herein as Exhibit "G". In the event that such Development Agreement is not approved and does not become binding upon the Parties within sixty (60) days of the Effective Date, either Party may, until such time as the Development Agreement is approved and binding upon the Parties, give notice of termination of this Agreement in accordance with the provisions of Article 9.2.

C. Naming Rights. Upon Closing for the first Development Phase, Developer shall have the right to name the Development.

D. Signage. Upon Closing for each Development Phase, Developer shall have the right to control all signage upon the Development Parcels contained within the Development

Phase, subject to compliance with the City's signage code. Developer anticipates a monument sign for the benefit of KCLS located on the Library Parcel, and also anticipates other appropriately placed and scaled monument signs for the benefit of the other retail or commercial tenants and the individual apartment communities.

Section 2.8 Community Plaza and Commons Ownership and Management.

A. Intent. The Parties intend that the Development shall include a separate Development Parcel consisting of the Plaza and the Commons to be known and referred to as the "**Plaza Parcel**". The completed Improvements to the Plaza Parcel (the Plaza and the Commons more specifically described below in subsections B and C hereof) are intended as a community amenity that will serve a variety of users including residential, retail or commercial tenants, customers, visitors and members of the public. The Plaza Parcel is intended to facilitate a diverse set of activities including those that are active or passive, formal or informal, group or individually oriented, and planned or spontaneous. The Plaza Parcel may function as a pedestrian destination, a place for public art, a setting for recreation and relaxation, and a place for public and private gatherings, events and activities.

B. Development of Outdoor Plaza. Development of the Plaza Parcel shall include an outdoor community plaza (the "**Plaza**") consisting of a minimum of 20,000 square feet of Site area and located generally as reflected in the Preliminary and Approved Site Plans attached hereto as Exhibits "F" and "F-1". As soon as practical after the Effective Date, Developer and the City shall enter into good faith negotiations to develop and mutually agree upon a "**Statement of Purpose and Design**" for the Plaza to describe the intended use and design guidelines for the Plaza, to include, by way of example and not limitation, design elements for such things as surface materials, structures, Landscaping, fencing, and gates. The Statement of Purpose and Design for the Plaza shall, upon approval of the Parties, be attached hereto as Exhibit "N". The BAR shall consider the "Statement of Purpose and Design" as criteria when approving the final Approved Site Plan and Plaza design elements. Developer shall be obligated to commence and complete development and construction of the Plaza (in accordance with the Statement of Purpose and Design for the Plaza) in conjunction with the first Development Phase. Developer shall bear all costs associated with development and construction of the Plaza; provided that, the allocable costs thereof shall be taken into account in the Residual Land Value Analysis.

C. Development of Indoor Community Commons. Development of the Plaza Parcel shall include a finished indoor community space (the "**Commons**") consisting of a minimum of 2,000 square feet of usable floor area generally located as reflected in the Preliminary and Approved Site Plans attached hereto as Exhibits "F" and "F-1". As soon as practical after the Effective Date, Developer and the City shall enter into good faith negotiations to develop and mutually agree upon a "**Statement of Purpose and Design**" for the Commons to describe the intended use and design guidelines for the Commons. The Statement of Purpose and Design for the Commons shall, upon approval of the Parties, be attached hereto as Exhibit "O". The BAR shall consider the "Statement of Purpose and Design" as criteria when approving the exterior design elements of the Commons. Developer shall be obligated to commence and complete development and construction of the Commons (in accordance with the Statement of Purpose and Design for the Commons) in conjunction with the first Development Phase. Developer shall

bear all costs associated with development and construction of the Commons; provided that, the allocable costs thereof shall be taken into account in the Residual Land Value Analysis.

D. Purchase of Community Plaza Parcel. As a condition precedent to the City's obligation hereunder to convey, in whole or in part, the Development Parcel(s) to be developed as part of the first Development Phase, Developer shall, contemporaneous with the purchase of the initial Development Parcel(s), purchase the Plaza Parcel which shall be considered as part of the first Development Phase for purposes of the Residual Land Value Analysis. The Plaza Parcel shall be developed contemporaneous with and as part of the first Development Phase and the costs associated with development and construction of the Improvements thereon shall be allocated as an Additional Deduction for purposes of the Residual Land Value Analysis.

E. Covenants, Conditions and Restrictions.

1. Intent and Purpose. The City and Developer shall, as soon as practical after the Effective Date of this Agreement, develop mutually acceptable covenants, conditions and restrictions (the "CC&Rs") that, upon mutual approval by the Parties, shall be attached hereto and incorporated into this Agreement as Exhibit "H". The Parties intend that the CC&Rs will establish the terms and conditions upon which the Plaza Parcel shall be dedicated, managed, maintained and operated exclusively as a community amenity and the reciprocal rights, duties and obligations associated with the Development Parcels. The Parties intend that the Plaza Parcel shall not be used or developed for uses inconsistent with the express and authorized uses and purposes as set forth in the CC&Rs. In conformance herewith, the CC&Rs shall be drafted to ensure that the Plaza Parcel remains a public amenity that will benefit not only the private property owners within the Development but the community at large.

2. Recording. As a condition of Closing on the conveyance of each Development Parcel to Developer, Developer agrees to subject its interest in each such Parcel to the CC&Rs thereafter encumbering the Development Parcels and the Community Plaza Parcel as set forth herein. At Closing of each Development Parcel, Developer shall cause the CC&Rs to be recorded against the Property in substantially the form attached as Exhibit "H", or with only such changes as are approved in writing by the City.

3. Changes to CC&Rs. The City shall approve any revision to the CC&Rs, and Developer agrees to subject its interests in each Development Parcel to amendments of the CC&Rs, if such amendment is necessary to: (i) bring any provision into compliance with any applicable government statute or regulation or judicial determination; (ii) enable any reputable title insurance company to issue title insurance coverage on the Property or any other property that is subject to such CC&Rs; (iii) otherwise satisfy the requirements of any government agency or governmental regulations; and (iv) satisfy the purpose of the City to provide for the long-term management, maintenance and operation of the Plaza Parcel; provided, however, that any amendment proposed pursuant to the preceding clauses (i) through (iv) hereunder shall not be permitted without the prior written consent of Developer, or successor, if it will have a material adverse effect on any substantive right of Developer hereunder or adversely affect title to the Development Parcels.

4. Amendment or Termination After Recording. Notwithstanding any provision of the CC&Rs or otherwise, following recordation of the CC&Rs against any

Development Parcel, and so long as Developer (as declarant under the CC&Rs) maintains sole control of the Development Parcel(s) subject to the CC&Rs, Developer shall not amend or terminate the CC&Rs without the prior written approval of the City.

5. Relationship to This Agreement. The Parties acknowledge and agree that this Agreement (including any documents executed pursuant to this Agreement) on the one hand, and the CC&Rs on the other hand, may set forth similar or related duties and obligations of Developer (as a Party to this Agreement, and as the declarant and the owner of Improvements subject to the CC&Rs) with respect to the use, operation, and maintenance of the Development or portions thereof; that in some instances, the scope, method, or manner for performance of such duties and obligations may vary between this Agreement (including any documents executed pursuant to this Agreement) on the one hand, and the CC&Rs on the other hand; and that Developer is required to comply with and implement its respective duties and obligations under this Agreement (including any documents executed pursuant to this Agreement), and the CC&Rs. Nothing in the CC&Rs shall modify, amend, supersede, impair, or otherwise affect the duties and obligations of Developer to the City under this Agreement (including any documents executed pursuant to this Agreement). Nothing in this Agreement (including any documents executed pursuant to this Agreement) shall modify, amend, supersede, impair, or otherwise affect the duties and obligations of Developer (as declarant or owner of Improvements within the Development) under the terms of the CC&Rs. The terms of this Agreement (including any documents executed pursuant to this Agreement) and the CC&Rs shall be interpreted harmoniously to give effect to the terms of all such documents to the greatest extent possible. In the event of any direct and irreconcilable inconsistency between the terms of this Agreement (including any documents executed pursuant to this Agreement) on the one hand, and the terms of the CC&Rs with respect to the Retained Improvements on the other hand, the terms of this Agreement (including any documents executed pursuant to this Agreement) shall control to the extent of any such direct and irreconcilable inconsistency.

6. Effect of CC&Rs. The CC&Rs shall, at the time of conveyance of each Development Parcel, create mutual equitable servitudes upon the Plaza Parcel and each Development Parcel in favor of every other Development Parcel and shall create reciprocal rights and obligations in, between and among all persons and/or entities having any right, title or interest in and to any Development Parcel and the Plaza Parcel, or any part thereof. In addition, said CC&Rs shall run with such portions of the Property comprising the Development Parcels and the Plaza Parcel and shall be binding upon all Parties having or acquiring any right, title or interest in and to the Development Parcels and the Plaza Parcel, and shall inure to the benefit of the City, each Development Parcel owner and each successor in interest of such Development Parcel owner.

7. Term. It is the Party's intent that the obligations under the CC&Rs shall be of definite duration to coincide with the forty (40) year term of the lease.

F. Management and Operation. Developer shall, in cooperation with the City and no later than the one hundred eighty (180) days after receiving building permits for the first Development Phase, do all things reasonable and necessary to form an independent, community-based non-profit organization (hereafter "**Community Organization**") that will, through a lease agreement, manage, operate, maintain and promote the use of the Plaza and the Commons, and any facilities located thereon, in a manner consistent with the CC&Rs. The goal of the

Community Organization shall be to implement and carry out the purposes set forth in the CC&Rs for the management, maintenance and operation of the Plaza Parcel, with the goal of being financially self-sufficient through the collection of rental and user fees and solicitation of grants from outside agencies. Toward that end, Developer and the City shall agree upon a plan for the formation of the independent, community-based non-profit organization, including its initial mission, articles of incorporation, bylaws, composition of board and officer positions, and board member selection. The governing board of the Community Organization shall represent both the interests of the community at large, and the private owners and tenants of the Development.

G. Long-Term Lease. After the Community Organization is formed and governing board established and seated, Developer and the Community Organization shall negotiate, approve and execute a long-term lease agreement granting the Community Organization possession and use of the Plaza and Commons for an initial term of forty (40) years from the date the City issues a certificate of occupancy for the first Development Phase for an annual lease payment of One Dollar (\$1.00) (the "Plaza Parcel Lease"). The terms of the Plaza Parcel Lease shall substantially conform to the following:

1. Scheduling. The Community Organization shall have the right, duty and obligation to manage and schedule, and may charge rental or user fees for, the use of the Plaza and the Commons, and any related facilities, including setting usage policies (such as frequency and hours of use), rental rates, user fees, and security deposits. It is intended by the Parties that the Community Organization shall establish and revise from time to time, and implement, a program (the "**Public Activities Program**") for regular public activities on the Plaza for community events and activities that make the Plaza and Development a focal point of community involvement.

2. Plaza Maintenance. The owners of the Development Parcels, and their successors in interest, shall jointly provide for the ongoing maintenance of the Plaza's Landscaping, Improvements, and other infrastructure and pay for related utilities including electricity, sanitary sewer, water, stormwater and solid waste. The Community Organization shall reimburse the owners of the Development Parcels for 50% of the ongoing maintenance and utility costs. The Community Organization shall reimburse the owners of the Development Parcels for 100% of solid waste and cleanup costs related to renters or users scheduled by the Community Organization.

3. Commons Maintenance. The owners of the Development Parcels, and their successors in interest, shall be jointly responsible for maintaining the structural components, mechanical systems (including HVAC, plumbing, and electrical), and exterior of the Commons. The Community Organization shall be responsible for maintaining the interior non-structural components such as floor surfaces, wall surfaces, doors, and windows.

4. Plaza and Commons Repair. The owners of the Development Parcels, and their successors in interest, shall be jointly responsible for the costs of repairing any damage to the Plaza and the Commons resulting from ordinary wear and tear and damage caused by users not scheduled by the Community Organization, including damage to Landscaping, lighting, Improvements, and other infrastructure. The Community Organization shall be responsible for the costs of repairing any damage to the Plaza and the Commons caused by renters or users

scheduled by the Community Organization, including damage to Landscaping, lighting, all improvements, and other infrastructure.

5. Commons Utilities. The Community Organization shall be responsible for obtaining all utility service for the Commons and paying all related utility service fees, including electricity, sanitary sewer, water, stormwater and solid waste.

6. Non-Fixed Assets. The Community Organization shall be responsible for maintenance and capital replacement of all indoor and outdoor non-fixed assets, including furniture and equipment.

7. Property Taxes; Insurance. The Community Organization shall be responsible for paying all property taxes and insurance attributable to the Plaza and Commons and their related Improvements.

H. Dissolution. The formation documents of the Community Organization shall provide that, in the event of the dissolution (voluntary or involuntary) of the Community Organization, the net assets of the non-profit organization (including but not limited to the rights and responsibilities granted under the Plaza Parcel Lease) shall be transferred to another local community-based organization approved by the City and Developer. In the event the City and Developer are unable to agree on another local community-based organization, at the City's election, the Community Organization's net assets and the Plaza Parcel Lease shall be assigned to the City.

I. Developer Contribution. Developer shall make a one-time start-up donation of not less than \$50,000 to the Community Organization within ninety (90) days after the formation of the Community Organization. Neither Developer nor the City shall have any responsibility to pay for or contribute to the ongoing management and operating expenses of the Community Organization or its successor; provided that, nothing herein shall modify any obligations of Developer or the owners of the Development Parcels under the CC&Rs.

Section 2.9 Library.

A. Establishment of Library Parcel. The City has identified City-owned land adjacent to the Property consisting of approximately 20,000 to 25,000 gross square feet located in the northeast corner of the intersection of Tukwila International Boulevard and South 144th Street for future development of a branch of the King County Library System (the "**Library Parcel**"). The approximate location and configuration of the Site area proposed for the Library Parcel is generally depicted in the Preliminary Site Plan. It is intended that the boundaries of the Library Parcel will be established through a Boundary Line Adjustment application submitted to the City by Developer, which Boundary Line Adjustment shall be a condition precedent to the sale of the Library Parcel to the KCLS. KCLS, the City and Developer shall mutually agree upon the proposed boundaries for the Library Parcel. Developer hereby waives any right to acquire or develop the Library Parcel except as provided herein.

B. Purchase and Sale Agreement with KCLS. The City shall use its best efforts to secure a purchase and sale agreement ("**Library Purchase and Sale Agreement**") and development agreement with KCLS for KCLS to acquire the Library Parcel and develop and

construct a new library branch on the Library. In the event that the City and KCLS do not close on the conveyance of the Library Parcel to KCLS on or before the closing date as set forth in the Library Purchase and Sale Agreement, then Developer shall have the right to purchase, and the City agrees to convey to Developer, the Library Parcel on substantially the same terms and conditions as provided for with respect to the remainder of the Property, except as otherwise provided herein. The City agrees that, in the event that the Library Purchase and Sale Agreement becomes effective after the Effective Date of this Agreement, the closing date established for the conveyance of the Library Parcel to the Library shall be no later than December 31, 2013; provided that, this time period shall be tolled for excusable delay in accordance with Section 10.2 hereof (Force Majeure).

C. Infrastructure Improvements Benefiting Library Parcel; Reimbursement. Subject to appropriate and satisfactory arrangements for reimbursement of Developer for an allocable portion of the cost thereof, to be set forth in the KCLS Development Agreement, Developer shall be responsible for the design, engineering, development, construction and maintenance of all roads, parking, sidewalks, frontage improvements, drainage systems, utility systems, extensions and connections (collectively, the “**Library Off-Site Infrastructure**”) on or adjacent to the Property or adjacent right of way necessary to serve the Library Parcel. The owner of the Library Parcel shall have responsibility for the design, engineering, development, construction and maintenance of all Library on-site infrastructure located on or under the Library Parcel and making utility service connections. Developer agrees to work cooperatively with KCLS to design, develop and construct the Library Off-Site Infrastructure improvements to be consistent and compatible with the proposed development of the Library Parcel by KCLS. The Parties intend that KCLS shall be responsible for reimbursement to Developer of the proportional design, engineering, development, construction and maintenance costs for Library Off-Site Infrastructure.

The City shall include in the Library Purchase and Sale Agreement, an obligation for KCLS to reimburse a reasonable and proportional share of Developer’s costs for design, engineering, development and construction and maintenance of shared infrastructure, e.g. roads, parking, sidewalks, frontage improvements, drainage systems, and other utility systems; provided that, such obligation shall be contingent upon conveyance of the Library Parcel to KCLS and mutual written agreement by and between Developer and KCLS regarding the allocation of such shared infrastructure costs to KCLS.

D. KCLS Development Agreement; Easements; Parking. It is anticipated that KCLS and Developer will work cooperatively to reach an agreement between the KCLS and Developer to determine the boundaries of the Library Parcel, to determine the allocable cost of Library Off-Site Infrastructure, for Developer to construct and install such Library Off-Site Infrastructure, and to provide reciprocal easements for such Library Off-Site Infrastructure. It is further anticipated that such an agreement will provide for a parking easement (or similar rights) for the benefit of the Library Parcel to the extent necessary to meet parking requirements for the development of the Library Parcel, and for Developer to make the necessary Improvements to the Property such that sufficient parking is available for the Library Parcel to meet parking requirements for the development of the Library Parcel under applicable City Municipal Code and to allow a certificate of occupancy to be issued for KCLS to occupy and use the Improvements to the Library Parcel. Upon the effective date of the agreement between the

KCLS and Developer (the “**KCLS Development Agreement**”), such agreement shall be attached hereto and incorporated herein as Exhibit “L”.

Section 2.10 Temporary Construction Easement.

As soon as practical after the Effective Date of this Agreement, and prior to Closing with respect to the first Development Phase, the Parties shall mutually agree upon the terms and conditions of a temporary construction easement (the “**Temporary Construction Easement**”). The purpose of the Temporary Construction Easement shall be, among other things, to:

- A. Provide Developer and the Contractors access to and use of the Property for construction staging and storage of equipment and materials to otherwise facilitate making Improvements to the Property;
- B. Authorize installation and construction of the Library Off-Site Infrastructure;
- C. Authorize installation and construction of Improvements required for Developer Infrastructure Work (as defined pursuant to Section 5.2);
- D. Authorize demolition and removal of the roadway for that portion of 41st Avenue upon Final Street Vacation Approval (as defined pursuant to Section 2.6);
- E. Authorize the grant of temporary access required pursuant to the Street Vacation Agreement(s);
- F. Address ownership of Library Off-Site Infrastructure improvements and compensation to the City for use of City-owned property encumbered by the Temporary Construction Easement; and
- G. Allocate liability for activities upon City-owned property and provide for indemnification and liability insurance for the protection of the City for activities upon City-owned property.

The Temporary Construction Easement, upon execution by the Parties, shall be attached hereto and incorporated into this Agreement as Exhibit “I”.

Section 2.11 Restaurant/Retail Space Covenant.

The City has a strong desire for the first Development Phase to include a coffee shop and at least one non-franchise restaurant. As part of the Design Review process for the first Development Phase, Developer and City shall mutually agree on the location and size of a retail space intended for a coffee shop and a retail space intended for a non-franchise restaurant. Developer shall use its best efforts to lease the designated spaces for a coffee shop and for a non-franchise restaurant and covenants not to lease these spaces to users other than for a coffee shop and for a non-franchise restaurant for at least two (2) years from the date the City issues an Estoppel Certificate of Completion for the residential component of the first Development Phase.

Section 2.12 Police Resource Center.

As soon as practicable after the Effective Date, Developer and the City shall meet and negotiate in good faith the terms and conditions of an agreement (the “**Police Resource Center Agreement**”) for the lease of a space (the “**Lease**”) within the Development for use by the City as a neighborhood police resource center (the “**Police Resource Center**”).

It is intended by the Parties that the Police Resource Center Agreement shall include substantially all material terms and conditions of the City’s Lease of space for the Police Resource Center, including, but not limited to, the following:

A. Lease of at least 2,000 square feet of office and administrative space to be used by the City as a neighborhood Police Resource Center in a location satisfactory to Developer and the City, which shall be identified in the Approved Site Plan;

B. Such office and administrative space shall be in a finished condition ready for move-in satisfactory to Developer and the City;

C. The Lease shall provide the City three (3) easily accessible, surface parking spaces satisfactory to Developer and the City reserved exclusively for Police use only, including one (1) parallel street parking space immediately adjacent to the Police Resource Center along South 144th Street;

D. The City shall pay rent at the then fair market rental rate for like-kind office space comparable to the Police Resource Center in the vicinity, taking into account the level of tenant improvements and finishes requested by the City, and shall be subject to the good faith negotiation of the Parties but at a starting rate not to exceed \$12.00 per square foot per year plus allocable triple-net expenses; and

E. The initial Lease term shall be for a minimum of five (5) years and the Lease shall grant the City the option to renew its Lease for up to two (2) consecutive five (5) year terms at the same lease rate adjusted for inflation and/or market conditions.

Upon the effective date of the Police Resource Center Agreement, the same shall be attached hereto as Exhibit “M”.

Section 2.13 Other Approvals.

A. On-Street Parking Approval. Developer may request City approval to construct some limited on-street parking adjacent to certain Development Parcels as shown on the Preliminary and Approved Site Plans attached hereto as Exhibit “F” and Exhibit “F-1”. If Developer’s traffic consultant and the City’s Traffic Engineer support this request, the City Administration will support the request and agrees to process the request as soon as practical. It is anticipated that the recommendations of Developer’s traffic consultant will also include such matters as right in, right out only turn lanes. Accordingly, such other traffic-related recommendations shall be subject to the approval of the City’s Traffic Engineer.

B. Other Off-site Infrastructure Improvements. Certain other off-site infrastructure improvements may be necessitated based on certain pending decisions by Developer, such as the introduction of parallel parking within the City’s right of way along a portion of Tukwila International Boulevard separated from traffic by channelization, or the relocation of all or portions of the existing crosswalk across Tukwila International Boulevard to better align the crosswalk with a major pedestrian access point for the Development (the “Other Off-site Infrastructure Improvements”). Accordingly, Developer shall be responsible for the costs of such Other Off-site Infrastructure Improvements, but such costs shall be taken into account in the Residual Land Value Analysis. Such Other Off-site Infrastructure Improvements shall be subject to approval by the City pursuant to the Design Review process set forth in Section 2.7 hereof.

C. Other Approvals. Within the time frames set forth in the Phased Development Plan, along with the reasonable and diligent assistance (if necessary) of the City, Developer shall apply to all other government agencies and public utilities for any other permits, approvals, and “service availability” letters (such as for water, sewer, and electricity) necessary for the development of each Development Phase consistent with this Agreement, and shall diligently pursue procurement of such other permits, approvals, and “service availability” letters.

D. Evidence of Approvals. Within the time frames set forth in the Phased Development Plan, Developer shall submit to the City evidence that all City permits and approvals (including approval of the BLA), and all other permits, approvals, and “service availability” letters necessary for development of each Development Phase in accordance with this Agreement have been obtained or approved. Only upon delivery of such evidence in form satisfactory to the City, shall the conditions of Section 4.5(c) for conveyance of the Development Parcels contained in such Development Phase be deemed to have been met. If such evidence is not delivered within the applicable time frames specified in the Phased Development Plan, this Agreement may be terminated by the City pursuant to Section 9.2(B) of this Agreement.

Section 2.14 Construction Contracts.

A. At least thirty (30) days prior to submission of a Construction Contract to the City pursuant to Section 4.4 hereof (Residual Land Value Analysis), Developer shall submit to the City the proposed Construction Contract with the General Contractor for the proposed Development Phase, together with the Approved Construction Plans. The City shall, for the sole purpose of ensuring that the Construction Contract accurately reflects the anticipated Construction Costs that will be utilized for purposes of the Residual Land Value Analysis as set forth in Section 4.4 of this Agreement, review the Construction Contract and Approved Construction Plans and either approve or disapprove the submitted Construction Contract within thirty (30) calendar days from the date the City receives the proposed Construction Contract. If the proposed Construction Contract is not approved by the City, then the City shall notify Developer in writing of the reasons for disapproval and the required revisions to the previously submitted Construction Contract. Developer shall thereafter submit a revised Construction Contract within thirty (30) days of the notification of disapproval. The City shall either approve or disapprove the revised Construction Contract within thirty (30) days of the date such revised Construction Contract is received by the City.

If the City disapproves the revised proposed Construction Contract, this Agreement may be terminated pursuant to Section 9.2. Only upon City approval of a Construction Contract shall the pre-disposition condition set forth in this Section 2.14 be deemed to have been met.

B. Following City approval of a Construction Contract pursuant to this Section 2.14, Developer may, without City approval, make changes to such Construction Contract that are consistent with, and do not cause the Construction Contract to be out of compliance with, this Agreement; provided, however, that Developer shall first provide the City with notice, clearly indicating the nature of the proposed changes, not less than ten (10) days before Developer enters into an agreement with the General Contractor to effectuate such changes. Developer shall not make any changes to a Construction Contract previously approved by the City pursuant to this Section 2.14 that would cause the Construction Contract to be out of compliance with this Agreement without the prior written consent of the City. Notwithstanding the foregoing, changes to the Construction Contract involving changes to the Construction Plans or related specifications that are attached to or incorporated in the Construction Contract shall be subject to the provisions of Section 10.14(A) (City Actions) and 10.18 (“Operating Memoranda”) and not to the provisions of this paragraph B.

C. Subject to the provisions of Section 2.14(A) and the provisions of paragraph B hereof, prior to, and as a further condition of the Closing, Developer and the General Contractor shall execute the Construction Contract substantially in the form approved by the City and deliver a fully executed copy of the Construction Contract to the City.

Section 2.15 Financing Plan.

After the City has notified Developer that all necessary building and engineering permits for a Development Phase are ready to be approved, Developer shall submit to the City the proposed Financing Plan for that Development Phase for its review and approval. The City shall either approve or disapprove the proposed Financing Plan within thirty (30) days from the date the City receives the proposed Financing Plan. If the proposed Financing Plan is not approved by the City, then the City shall notify Developer in writing of the reasons for disapproval and the required revisions to the previously submitted Financing Plan. Developer shall thereafter submit a revised Financing Plan within thirty (30) days of the notification of disapproval. The City shall either approve or disapprove the revised Financing Plan within thirty (30) days of the date such revised Financing Plan is received by the City. The City shall approve the initial or revised Financing Plan if it contains the elements described in the definition of the Financing Plan contained in Section 1.1 hereof, and demonstrates the availability of sufficient funding to pay the total development costs associated with the Development Phase and all other obligations of Developer under this Agreement associated with the Development Phase, as reflected in the approved Financing Plan and as evidenced by firm commitments for such funding that are consistent with the terms of this Agreement and subject only to industry standard funding conditions and a satisfactory budgetary outcome with respect to the Purchase Price of the Development Parcel(s) involved in the Development Phase under the Residual Land Value Analysis.

If the City disapproves the revised Financing Plan, this Agreement may be terminated pursuant to Article 9. Only upon City approval of a Financing Plan shall the pre-disposition condition of this Section 2.15 be deemed to have been met.

Developer shall submit any material revisions to an approved Financing Plan to the City for its review and approval. Any revised proposed Financing Plan shall be considered and approved or disapproved by the City in the same manner and according to the same timeframe set forth above for the initial Financing Plan. Until a revised Financing Plan is approved by the City, the previously approved Financing Plan shall govern the financing of the Development Phase.

Section 2.16 Evidence of Availability of Funds.

Prior to Closing, Developer shall submit to the City evidence reasonably satisfactory to the City that any conditions to the release or expenditure of funds described in the approved Financing Plan have been met or will be met at the Closing and that such funds will be available at the Closing for commencing construction of the Development Phase. Only upon delivery of such evidence in form satisfactory to the City shall the pre-disposition condition of this Section 2.16 be deemed to have been met. If such evidence is not received within the time frames set forth in the Phased Development Plan, this Agreement may be terminated by the City pursuant to Article 9.

Section 2.17 Performance and Payment Guarantee.

Prior to Closing with respect to each Development Parcel, Developer shall submit evidence satisfactory to the City of the existence of an unconditional personal performance and payment guarantee from Developer and/or the principals of Developer in favor of Developer's Lender guaranteeing completion of construction of the Improvements with respect to each applicable Development Phase and guaranteeing against construction cost overruns with respect to such Development Phase (the "Performance and Payment Guarantee"). An executed copy of the Performance and Payment Guarantee with respect to each Development Phase shall be attached hereto as Exhibit "P."

ARTICLE 3
CITY RESPONSIBILITIES

Section 3.1 Permits and Approvals.

A. City Assistance. The City shall provide reasonable assistance to Developer in obtaining any City issued permits and approvals, and all other permits, approvals, and "service availability" letters necessary for construction of the Improvements.

B. City Retains Discretion. Developer acknowledges that execution of this Agreement in no way limits the discretion of the City or any other government agency in connection with the permit and approval process with respect to the Development. Any approvals provided for herein are independent of, in addition to, and do not in any way obligate the City with respect to usual and customary City permitting, code compliance and other regulatory reviews, except that the City shall use its best efforts to expedite such reviews. The outcome of any such regulatory review is independent of and is in no way biased, prejudiced or predetermined in any way by this Agreement. Nothing in this Agreement is intended or shall be

construed to require that the City exercise its discretionary authority under its regulatory ordinances to further the Development nor bind the City to do so. Except as otherwise expressly stated herein or in the Development Agreement, the City will process applications for permits and approvals associated herewith as if such applications were made without any City participation in the Development, to the extent not preempted by federal laws, regulations or other requirements.

ARTICLE 4 DISPOSITION OF PROPERTY

Section 4.1 In General. Developer has, pursuant to Section 2.4 herein, established Development Phases for development of the Property and has, pursuant thereto, identified the Development Parcels to be included in each Development Phase. The following provisions for disposition of the Development Parcels shall apply to the conveyance of each Development Parcel associated with each Development Phase.

Section 4.2 Opening Escrow. To accomplish the Closing as to each Development Parcel within a Development Phase, the Parties shall, as to each Development Phase, establish an escrow with the Escrow Agent and shall execute and deliver to the Escrow Agent written instructions that are consistent with this Agreement; provided that, escrow shall not open until after all required pre-disposition conditions precedent to Closing, as set forth in this Agreement, have been met as to each such Development Phase, unless otherwise agreed to in writing by the Parties.

Section 4.3 Development Parcel Purchase Price. As a condition of the Closing, Developer and the City shall establish and agree upon the Purchase Price for each Development Parcel associated with the Development Phase subject to Closing, based upon the Adjusted Residual Land Value as determined in accordance with Section 4.4 of this Agreement.

Section 4.4 Residual Land Value Analysis.

A. In General. The Parties intend to establish the Purchase Price for each Development Parcel, including the Plaza Parcel, based upon the Adjusted Residual Land Value determined through the residual land value analysis agreed upon pursuant to Section 4.4(D) of this Agreement (the “**Residual Land Value Analysis**”); provided that, the Purchase Price shall not be less than the Minimum Residential Unit Value amount as set forth in in Section 4.4(F) below. The Residual Land Value Analysis estimates the value of land (“**Residual Land Value**”) by subtracting total development costs, including by way of example, direct construction costs (hard costs), architectural and engineering fees, Development Impact Fees, permit fees and other soft costs, financing costs, and an agreed upon Developer profit and a return on Developer equity, from an agreed upon total project value based on market supportable net operating income based on projected stabilized rents, operating expenses and an agreed upon market capitalization rate.

B. Adjusted Residual Land Value. The Parties intend that certain development costs (collectively, the “**Additional Deductions**”), such as the development and construction costs associated with off-site Developer Additional Work (excluding the allocable costs of Library

Off-site Infrastructure for the Library Parcel to be paid for or reimbursed by KCLS), infrastructure Improvements required pursuant to the Street Vacation Agreements, and Improvements to the Plaza Parcel including the Commons, shall be allocated to each Development Parcel on a pro-rated basis resulting in a downward adjustment of the Residual Land Value (the “**Adjusted Residual Land Value**”).

C. Process for Determination of Residual Land Value Analysis.

1. Submittal of Proposed Residual Land Value Analysis. The Parties shall mutually agree upon the Residual Land Value Analysis to be applied to determine the Purchase Price of each Development Parcel. Toward that end, prior to opening escrow on the first Development Phase, Developer shall submit a proposal to the City for the Residual Land Value Analysis to be applied to each Development Parcel under this Agreement (the “**Residual Land Value Analysis Proposal**”). The Residual Land Value Analysis Proposal shall be consistent with the Developer Obligations set forth in subsection E below, shall include all material factors, methodology, adjustments (including Additional Deductions) and calculations to be used in determining the Adjusted Residual Land Value, and shall identify the sources of the information, data, and development costs that will be relied upon in conducting the Residual Land Value Analysis. If certain development costs should be allocated among different Development Parcels, Developer shall identify the methodology and basis for such cost allocations (for example, if Improvements are made on two or more Development Parcels under a single Construction Contract, the related development and constructions costs must be allocated to each Development Parcel).

2. Construction Costs. Construction costs for purposes of the Residual Land Value Analysis shall be based upon the lump sum bids for construction of the Improvements upon each Development Phase as set forth in an approved Construction Contract between Developer and the Contractor. The Parties recognize, however, that such lump sum bid prices within a Construction Contract may need to be segregated for different components of the Improvements in order to determine the proper cost allocation for purposes of determination of the Adjusted Residual Land Value (for example, the costs associated with Developer Additional Work within a Construction Contract may be allocable among the Development Parcels in multiple Development Phases, where the remainder of the costs within a Construction Contract may be allocable among the Development Parcels in a single Development Phase; thus, the allocation of costs associated with such Developer Additional Work must be determined separately from the costs associated with Improvements within a single Development Phase.) The Improvements shall be consistent with the Approved Construction Plans.

3. City Review. Upon receipt, the City shall review and evaluate the Residual Land Value Analysis Proposal and may retain the services of a consultant for such purposes, the cost of which shall be borne by the City. The City shall have twenty (20) business days from receipt of the Residual Land Value Analysis Proposal to evaluate the Proposal and to reject or approve the same, or request further information. In the event that the City does not give notice of its rejection or request for additional information within twenty (20) business days of receipt of the Proposal, then the Residual Land Value Analysis Proposal shall be deemed approved by the City. In the event that the City rejects the Residual Land Value Analysis Proposal, the City will give written notice of such rejection within twenty (20) business days of receipt of the Proposal, together with a detailed explanation of the reasons for such rejection. If

the City requires additional information to evaluate the Residual Land Value Analysis Proposal, the City will provide written notice to Developer of its request for additional information. Developer shall have fifteen (15) business days from receipt of notice to provide the requested information to the City. The City will then have an additional ten (10) business days to evaluate and respond to the Residual Land Value Analysis Proposal. The Parties will continue with a like process until such time as an agreed upon Purchase Price is determined, or the Parties elect to exercise their remedies set forth below.

4. Remedies. In the event that the Parties, after using good faith efforts, are unable to mutually agree upon a Residual Land Value Analysis Proposal, either Party may give notice of termination of this Agreement pursuant to Section 9.2(B) hereof, or may, upon mutual agreement, subject the Dispute to mediation or arbitration pursuant to Section 9.11 hereof, or mutually agree to negotiate amendments to the terms and conditions of this Agreement to address the nature of the Dispute.

D. Determination of Purchase Price.

1. Conditions Precedent. The Adjusted Residual Land Value for each Development Parcel will not be determined and the Purchase Price agreed upon until:

- a. the City has notified Developer that all permits are approved and are ready to be issued;
- b. all final permit fees and charges and Development Impact Fees are known;
- c. an approved Construction Contract for the Development Phase has been executed with a General Contractor;
- d. the BLA is approved and ready to be recorded;
- e. an approved Financing Plan has been established to the satisfaction of the City pursuant to Section 2.14 hereof;
- f. Developer has submitted to the City satisfactory evidence of availability of funds pursuant to Section 2.15 hereof;
- g. the Final City Council Approval of the Street Vacation has been given within the meaning of Section 2.6(B) of this Agreement and the Street Vacation Agreements have been fully executed and are binding upon the Parties thereto; and
- f. Developer has submitted to the City satisfactory evidence of insurance pursuant to Section 6.3(B) hereof.

2. Submission of Proposal. Upon mutual agreement of the Parties that the foregoing conditions have been satisfied, Developer will then apply the agreed upon Residual Land Value Analysis to determine the proposed Adjusted Residual Land Value (the “**Adjusted Residual Land Value Proposal**”) for each Development Parcel using the agreed upon Residual

Land Value Analysis, and provide written notice to the City of the same. The Adjusted Residual Land Value Proposal shall identify all material factors, data and information utilized in the calculation and the source and reliability of such factors, data and information, and shall include, explain and identify the following:

a. a comprehensive project proforma including a comprehensive development and construction budget, Developer profit and return on Developer equity, financing costs, tax credits and grants, rate of return on equity, sources and uses of funds, net operating income based on projected stabilized rents and operating expenses, and estimated market capitalization rate;

b. documentation supporting the included factors, data and information reasonably satisfactory to the City including, by way of example, copies of the approved Construction Contract for the construction of the Improvements with respect to to each Development Parcel, a copy of the lender's appraisal, and a market study or appraisal upon which rents are projected;

c. any cost of any Improvements which will be allocated among the Development Parcel(s) as Additional Deductions;

d. binding contracts for environmental Remediation or abatement (if applicable);

e. firm written commitments for all debt financing and equity investment, subject only to industry standard funding conditions and a satisfactory budgetary outcome with respect to the Purchase Price of the Development Parcel(s) involved in the Development Phase under the Adjusted Residual Land Value Proposal; and

f. the nature and amount of each material item in the development and construction budget and the methodology for all cost allocations and Additional Deductions.

3. City Response. The City shall have ten (10) business days from receipt of Adjusted Residual Land Value Proposal for each Development Parcel to evaluate the Proposal and to reject or approve the same, or request further information. In the event that the City does not give notice of its rejection or request for additional information within ten (10) business days of receipt of the Adjusted Residual Land Value Proposal, then the Proposal will be deemed approved by the City and shall be deemed the agreed upon Purchase Price for the applicable Development Parcel(s). In the event that the City rejects the Proposal, the City will give written notice of such rejection within ten (10) business days of receipt of the Proposal, together with a detailed explanation of the reasons for such rejection. If the City requires additional information to evaluate the Adjusted Residual Land Value Proposal, the City will provide written notice to Developer of its request for additional information. Developer shall have ten (10) business days from receipt of notice to provide the requested information to the City. The City will then have an additional ten (10) business days to evaluate and respond to the Adjusted Residual Land Value Proposal. The Parties will continue with a like process until such time as an agreed upon Purchase Price is determined.

4. Remedies. In the event that the Parties, after using good faith efforts, are unable to mutually agree upon the Adjusted Residual Land Value, either Party may give notice of termination of this Agreement pursuant to Section 9.2(B) hereof, or may, upon mutual agreement, subject the Dispute to mediation or arbitration pursuant to Section 9.11 hereof, or mutually agree to negotiate amendments to the terms and conditions of this Agreement to address the nature of the Dispute.

Developer may not request that the City issue approved permits for a particular Development Phase until Developer has deposited the agreed upon Purchase Price into escrow in accordance with the procedures set forth herein.

E. Purchase Price. The Purchase Price for each Development Parcel shall be the Adjusted Residual Land Value for each such Development Parcel; provided, however, that the Purchase Price may be determined in accordance with subsection 4.4(F) hereof in the event that the Adjusted Residual Land Value does not equal or exceed the applicable Minimum Residential Unit Value.

F. Minimum Residential Unit Value.

1. For purposes of this Agreement, the minimum residential unit value shall be \$10,000 per housing unit (the “**Minimum Residential Unit Value**”). In the event that the Adjusted Residual Land Value for the applicable Development Parcel(s) within a Development Phase results in a Residential Unit Value (as defined below) that is less than the Minimum Residential Unit Value, then the City may exercise its rights as set forth below in Section 4.4(F)(3) below.

2. The residential unit value (the “**Residential Unit Value**”) shall be determined as follows: All proposed retail, commercial or office space for the Development Phase, as set forth in the Approved Construction Plans, shall be converted into an equivalent number of residential dwelling units (“**Equivalent Residential Units**”) based on the average floor area of the proposed residential dwelling units in the affected Development Phase. The Parties shall then determine the actual total number of actual residential dwelling units proposed for the Development Phase as set forth in the Approved Construction Plans and add this number to the total number of Equivalent Residential Units for the Development Phase to determine the total deemed number of residential dwelling units for the Development Phase (the “**Deemed Number of Residential Dwelling Units**”). The Parties shall then calculate the “**Total Adjusted Residual Land Value**” by adding together the Adjusted Residual Land Value for each Development Parcel in the Development Phase. The Total Adjusted Residual Land Value shall then be divided by the Deemed Number of Residential Dwelling Units to determine the Residential Unit Value.

3. In the event that the Residential Unit Value, as determined pursuant to Section 4.4(F)(2) above, does not equal or exceed the Minimum Residential Unit Value, the City may request an upward adjustment of the Purchase Price such that a corresponding increase in the Total Adjusted Residual Land Value would result in a Residential Unit Value at least equal to the Minimum Residential Unit Value. In the event that Developer rejects the change in the Purchase Price proposed by the City, and the City rejects any counter-proposal by Developer, then either Party may terminate the Agreement with respect to the purchase of any Development

Parcels that have not yet closed escrow. The Agreement shall remain in full force and effect with respect to any Development Phase or Development Parcel that has closed escrow.

Section 4.5 Escrow/Closing.

A. Selection of Escrow Agent. Prior to and as a further condition of the Closing, the City shall (i) select an Escrow Agent reasonably acceptable to Developer to conduct the Closing for the purchase and sale of each Development Parcel, and (ii) Developer and the City shall agree upon escrow instructions to be delivered to the Escrow Agent. The escrow instructions shall be consistent with subsections B and C below.

B. Closing and Conveyance. The Closing shall occur after (1) the Purchase Price for each Development Parcel to be conveyed has been deposited into escrow in accordance with Section 4.4 hereof, (2) all pre-disposition conditions in Article 2 hereof have been satisfied by Developer or waived in writing by both Parties (it being agreed that such pre-disposition conditions are for the benefit of both Parties), (3) the Parties have deposited all documents required to convey title, (4) all conditions set forth in subsection C below have been satisfied, and (5) at the time of the Closing, there is no uncured City Event of Default or Developer Event of Default.

C. Conditions Precedent. Unless otherwise agreed to in writing by the Parties, the following are conditions precedent to, and are simultaneous conditions of, the Closing:

1. Delivery by City. On or prior to the Closing Date, City shall deposit with Escrow Agent, and shall deliver copies to Developer and its counsel (to the extent not previously delivered) at least five (5) days prior to the Closing Date, any closing costs which are the responsibility of City hereunder, and the following:

a. The Statutory Warranty Deed, substantially in the form attached hereto as Exhibit "C", duly executed and acknowledged by City, in recordable form, and ready for recordation on the Closing Date, together with a duly executed real estate excise tax affidavit;

b. Any reconveyance documents required to eliminate of record any existing deeds of trust, mortgages and other security documents which are a lien on the Development Parcel(s), and any affidavit required to eliminate the Title Company's exception, other than Permitted Exceptions;

c. Such resolutions, authorizations, certificates or other corporate and/or partnership documents or agreements relating to the City, as shall be reasonably required by Developer or Title Company in connection with this transaction;

d. The original of the final approved BLA, within the meaning of Section 2.5 hereof, duly executed and acknowledged by the City, in recordable form, and ready for recordation on the Closing Date;

e. A certified copy of the ordinance granting Final City Council Approval of the Street Vacation, within the meaning of Section 2.6 hereof, duly executed and acknowledged by the City, in recordable form, and ready for recordation on the Closing Date;

f. The DDA Memorandum, substantially in the form attached hereto as Exhibit “R”, in recordable form, duly executed and acknowledged by the City and Developer, and ready for recordation on the Closing Date;

g. Any other documents, instruments, addenda, records, correspondence or agreements called for hereunder which have not previously been delivered.

2. Delivery by Developer. On or before the Closing Date, Developer shall deposit with Escrow Agent the Purchase Price and any closing costs which are the responsibility of Developer hereunder, and the following:

a. The CC&Rs substantially in the form attached hereto as Exhibit “H”, duly executed and acknowledged by Developer, in recordable form, and ready for recordation on the Closing Date;

b. The original of the parking easement benefiting the Library Parcel in conformance with Section 2.9(D) hereof, substantially in the form attached hereto as Exhibit “T”, duly executed and acknowledged by Developer, in recordable form, and ready for recordation on the Closing Date; provided that, this condition shall not apply if the KCLS has not timely entered into a purchase and sale agreement with the City in conformance with Section 2.9(B) hereof; and provided further that this condition shall only apply to those Development Parcels that will be encumbered by such parking easement.

3. Other Instruments. City and Developer shall each deposit such other instruments as are reasonably required by Escrow Agent or otherwise required to close the escrow and consummate the purchase of the Development Parcel(s) in accordance with the terms hereof.

4. Other Conditions. The following are further conditions precedent to Closing:

a. Developer’s delivery to the City of a copy of the KCLS Development Agreement between Developer and the KCLS, in conformance with Section 2.9(D) hereof, duly executed and acknowledged by Developer and KCLS; provided that, this condition shall not apply if the KCLS has not timely entered into a purchase and sale agreement with the City in conformance with Section 2.9B hereof.

b. Developer’s delivery to the City of Certificates of Insurance in form reasonably satisfactory to the City demonstrating compliance with the insurance requirements of Section 6.3(B).

c. Developer’s delivery to the City of its Performance and Payment Guarantee substantially in the form attached hereto as Exhibit “P”.

d. City notification that it is ready to issue the necessary grading, demolition, engineering and building permit(s) for the Development Phase, subject to payment of the required permit fees (if not already accomplished).

Section 4.6 Title.

A. Condition of Title. The City shall convey to Developer, marketable and insurable fee simple title to the each of the Development Parcels comprised within each Development Phase, by execution and delivery of a Statutory Warranty Deed substantially in the form attached hereto as Exhibit "C", subject to the Permitted Exceptions.

B. No Adverse Action. City hereby agrees from and after the date of execution of this Agreement, until the Closing or the termination of this Agreement, that it (i) will take no action not contemplated in this Agreement that will adversely affect title to the Property, (ii) will not lease, rent, mortgage, encumber, or permit the encumbrance of all or any portion of the Property without Developer's prior written consent, except as otherwise provided in this Agreement, and (iii) will not, except as otherwise provided in this Agreement, enter into any written or oral contracts or agreements with respect to the operation of the Property which cannot be canceled on not more than thirty (30) days' notice without premium or penalty.

C. Title Insurance. Through the Closing, the City shall cause the Escrow Agent or other Title Company reasonably acceptable to Developer to issue an ALTA Owner's Policy (Form 1970) insuring Developer's interest in the Property subject only to the Permitted Exceptions and such other exceptions as may be caused by Developer (the "Title Policy").

Section 4.7 Condition of the Property.

A. Disclosure; Due Diligence Review Period. Developer, its employees, contractors and agents shall have the right to enter upon each Development Parcel where necessary to conduct activities necessary for preliminary testing for future development of the Property. Developer understands that the City has assembled the Property for redevelopment, and thus, with the exception of the dedicated public right of way, has not conducted activities upon or occupied the Property. The City shall provide or make available to Developer for inspection and copying to the extent available or within City's possession or control: any leases, all appraisals of each Development Parcel, all soils reports or environmental surveys or audits of each Development Parcel, all correspondence with any governmental authorities regarding each Development Parcel, and any other documents and information in the possession or control of City and pertaining to each Development Parcel, and all other items which Developer deems reasonably necessary to conduct its due diligence review of each Development Parcel (the "**Due Diligence Review Materials**"). City shall also instruct its consultants, agents, and representatives to produce or make available to Developer at no cost to Developer the Due Diligence Review Materials in the possession or control of such consultants, agents, and representatives.

Developer shall have fifteen (15) days from the date that City delivers all of the Due Diligence Review Materials to Developer (the "**Due Diligence Review Period**"), in which to conduct its review of the Property and the Due Diligence Review Materials. Said review may include, at Developer's election, a physical and engineering inspection of the Property and an environmental assessment, all at Developer's cost and expense. Developer shall also have the right to obtain surveys of the Property, at its cost and expense. The City agrees to cooperate with and assist Developer in the physical inspection of the Property and obtaining the Due Diligence Review Materials. Developer shall repair any damage to the Property caused by Developer, its

employees or agents during such physical inspection of the Property. During the Due Diligence Review Period, Developer and its employees, agents and consultants shall have free access to the Property and the books and records relating thereto for such purposes.

Developer shall provide the City copies of any environmental testing and site assessments, any geotechnical testing and exploration, and any topographical and/or boundary survey, as each step is completed. If, during such Due Diligence Review Period, Contaminants or geotechnical hazards become evident that were not previously identified, Developer and the City may renegotiate the terms and conditions of this Agreement, or otherwise terminate this Agreement pursuant to Section 9.2 hereof.

At Developer's request, the City shall agree to allow Developer to perform any necessary and appropriate environmental Remediation or abatement of any Known Contaminants in, on, under and upon the Developer Responsibility Area, before or after the Closing on the purchase of such affected portion of the Property, provided that the City approves the Remediation or abatement plan and budget. As a condition of such agreement, the Parties agree to extend the Due Diligence Review Period as necessary to complete the Remediation prior to Closing. The costs associated with any necessary and appropriate environmental Remediation or abatement to the Property, whether performed before or after the Closing on the purchase of such portion of the Property, shall be included as a development cost in connection with the Residual Land Valuation Analysis for purposes of the determination of the applicable Purchase Price of any corresponding Development Parcel(s).

Developer shall deliver written notice to the City and Escrow Agent on or before the close of business on the last day of the Due Diligence Review Period that it has either (1) approved the Due Diligence Review Materials and the results of Developer's independent investigation and intends to proceed with the purchase of the Property, or the purchase of Development Parcels comprising a specific Development Phase, or (2) it has elected to terminate this Agreement, whereupon this Agreement shall terminate and neither Party shall have any further rights or obligations hereunder.

Failure of Developer to provide such notice on or before the close of business on the last day of the Review Period shall be deemed an election by Developer not to terminate this Agreement as provided in (2) of the above paragraph. In this respect, City acknowledges that Developer may terminate this Agreement on or before the last day of the Review Period at Developer's sole and absolute discretion if Developer is not satisfied for any reason with the Property.

Section 4.8 Title Review.

A. Review of Title Information. Developer shall be entitled to review all title information regarding the Development Parcels comprised within a Development Phase as follows:

1. Review Documents. As soon as reasonably possible following mutual execution of this Agreement but, in any event, within fifteen (15) days of the Effective Date hereof, the City shall provide Developer with the following documents and materials:

a. Current extended coverage preliminary commitments for title insurance for the Development Parcels (collectively, the “**Title Report**”) issued by the title company selected by City (the “**Title Company**”) together with complete and legible copies of all general or special exceptions noted therein;

b. Copies of all existing and proposed easements, covenants, restrictions, agreements or other documents which affect the Development Parcels and which are not disclosed by the Title Report, or, if, to the best of City’s knowledge, no such documents exist, a certification by the City to that effect;

c. Any surveys of the Property in the City’s possession;

d. Statement of (and, if available, copies of) any other matters of any nature of which City has knowledge and which affect title to any part of the Development Parcels, whether or not of record and whether or not visible or ascertainable by inspection of the Development Parcels, and whether or not otherwise known to Developer.

2. Developer’s Title Notice to City. Developer shall advise the City in writing within fifteen (15) business days after the date Developer has received the last of the materials to be delivered by City to Developer, under this Section 4.8, what exceptions to title, if any, will be acceptable to Developer. Only those exceptions set forth at Section 1.1 (definition of Permitted Exceptions) and such additional exceptions approved in writing by Developer, or as otherwise proved herein, shall be included as Permitted Exceptions. Any liens, encumbrances, easements, restrictions, conditions, covenants, rights, right of way and other matters affecting title to the Development Parcels which are created and which may appear of record or be revealed by the survey or otherwise, after the date of the Title Report but before the Closing Date (collectively “**the Intervening Liens**”) shall also be subject to Developer’s approval and Developer shall have fifteen (15) business days after notice in writing of any Intervening Lien, together with a description thereof and a copy of the instrument creating or evidencing the Intervening Lien, if any, to submit written objections thereto or to give City notice of acceptance thereof in the manner set forth above. If Developer fails to notify City within said time period, Developer shall be deemed to have disapproved the condition of title to the Development Parcels.

3. City’s Response. City shall have ten (10) business days after receipt of Developer’s objections to give Developer written notice: (i) that City will remove any objectionable exceptions from title and provide Developer with evidence satisfactory to Developer of such removal, or provide Developer with evidence satisfactory to Developer that said exceptions will be removed on or before the Closing; or (ii) that the City elects not to remove such exceptions. If City gives Developer notice under clause (ii), Developer shall have ten (10) business days to elect to proceed with the purchase and take the Development Parcels subject to such exceptions (which exceptions shall then constitute Permitted Exceptions), or to terminate this Agreement. If Developer shall fail to give the City written notice of its election within said ten (10) business days, Developer shall be deemed to have elected not to proceed with the purchase. If the City shall give notice pursuant to clause (i) and shall thereafter fail to remove any such objectionable exceptions from title prior to the Closing Date, and Developer is unwilling to take title subject thereto, such failure shall be a City Event of Default hereunder and, without limiting Developer’s rights and remedies against the City, Developer may elect to

terminate this Agreement and the City shall be liable for Developer's costs and expenses incurred hereunder (including title and escrow costs and reasonable attorney's fees) after the City notifies Developer that it will remove objectionable exceptions. Notwithstanding the provisions of this Section 4.8, the City agrees to eliminate all financial liens or encumbrances on the Property at or prior to Closing, and if the City fails to do so, Developer may, at its option, cause any remaining financial liens or encumbrances to be satisfied in full at Closing, in which event the Purchase Price shall be reduced by the amount advanced by Developer to satisfy such financial liens or encumbrances.

B. "As Is" Purchase. Developer specifically acknowledges and agrees that the City is selling and Developer is buying each of the Development Parcels on an "as is, with all faults" basis, and that Developer is not relying on any representations or warranties of any kind whatsoever, express (except as expressly set forth in this Agreement) or implied, from the City as to any matters concerning each of the Development Parcels, including without limitation: (1) the quality, nature, adequacy and physical condition of the each of the Development Parcels (including, without limitation, topography, climate, air, water rights, water, gas, electricity, utility services, grading, drainage, sewers, access to public roads and related conditions); (2) the quality, nature, adequacy, and physical condition of soils, geology and groundwater; (3) the existence, quality, nature, adequacy and physical condition of utilities serving each of the Development Parcels; (4) the development potential of each of the Development Parcels, and the use, habitability, merchantability, or fitness, suitability, value or adequacy of each of the Development Parcels for any particular purpose; (5) the zoning or other legal status of each of the Development Parcels or any other public or private restrictions on the use of each of the Development Parcels; (6) the compliance of each of the Development Parcels or its operation with any applicable codes, Laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (7) the presence or absence of Hazardous Materials on, under or about each of the Development Parcels or the adjoining or neighboring property; and (8) the condition of title to each of the Development Parcels (except as otherwise expressly provided in Section 4.6(A) & (B)).

Developer affirms that Developer has not relied on the skill or judgment of the City or any of its respective agents, employees or contractors to select or furnish each of the Development Parcels for any particular purpose, and that the City makes no warranty that any of the Development Parcels are fit for any particular purpose. Developer acknowledges and agrees that it shall use its independent judgment and make its own determination as to the scope and breadth of its due diligence investigation which it made relative to each of the Development Parcels and shall rely upon its own investigation of the physical, environmental, economic and legal condition of each of the Development Parcels (including, without limitation, whether the Property is located in any area which is designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wildland fire area, by any federal, state or local government department). Developer undertakes and assumes all risks associated with all matters pertaining to the location of each of the Development Parcels in any area designated as a special flood hazard area, dam failure inundation area, earthquake fault zone, seismic hazard zone, high fire severity area or wildland fire area, by any federal, state or local government or City department.

Without limiting the generality of the foregoing provisions of this subsection (B), Developer specifically acknowledges and agrees that: (1) the City shall have no responsibility for

the suitability of each of the Development Parcels for development, and if the conditions of each of the Development Parcels are not entirely suitable for development, then Developer shall put each of the Development Parcels in a condition suitable for Development at its cost; and (2) if there is a discovery following the Closing of any Later Discovered Pre-Conveyance Contaminants, Developer shall be solely responsible, at its cost, for any required Remediation of, and any third-party damages related to, such Later Discovered Pre-Conveyance Contaminants.

C. Survival. The terms and conditions of this Section 4.8 shall expressly survive the Closing, shall not merge with the provisions of the Statutory Warranty Deed(s), or any other closing documents and shall be deemed to be incorporated by reference into the Statutory Warranty Deed. The City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to each of the Development Parcels furnished by any contractor, agent, employee, servant or other person. Developer acknowledges that the Purchase Price reflects the “As Is” nature of this purchase and sale transaction and any faults, liabilities, defects or other adverse matters that may be associated with any of the Development Parcels. Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with Developer’s legal counsel and understands the significance and effect thereof.

D. Acknowledgment. Developer acknowledges and agrees that: (1) to the extent required to be operative, the disclaimers of warranties contained in this Section 4.8 are “conspicuous” disclaimers for purposes of all applicable Laws and other legal requirements; (2) the disclaimers and other agreements set forth in this Section 4.8 are an integral part of this Agreement; (3) the Purchase Price has been adjusted to reflect the same; and (4) the City would not have agreed to sell any of the Development Parcels to Developer for the applicable Purchase Price without the disclaimers and other agreements set forth in this Section 4.8.

E. Developer’s Release of the City. Subject to City performance of the City obligations under this Agreement, Developer, on behalf of itself and anyone claiming by, through or under Developer hereby waives its right to recover from and fully and irrevocably releases the City, the City Council and their respective council members, appointees, employees, officers, directors, representatives, attorneys and agents (the “**City Released Parties**”) from any and all claims, responsibility and/or liability that Developer may have or hereafter acquire against any of the City Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (1) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of each of the Development Parcels, or suitability of any Development Parcel for any purpose whatsoever; (2) the presence of any Hazardous Materials (other than Known Contaminants); and (3) any information furnished by the City Released Parties under or in connection with this Agreement.

F. Scope of Release. The release set forth in subsection (E) of this Section 4.8 includes claims of which Developer is presently unaware or which Developer does not presently suspect to exist which, if known by Developer, would materially affect Developer’s release of the City Released Parties. Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, Developer agrees, represents and warrants that Developer understands and acknowledges that factual matters now unknown to Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are

presently unknown, unanticipated and unsuspected, and Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Developer nevertheless hereby intends to release, discharge and acquit the City Released Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, Developer, on behalf of itself and anyone claiming by, through or under Developer, hereby assumes the above-mentioned risks.

Notwithstanding the foregoing, this release shall not apply to, nor shall the City be released from, the City's actual fraud or misrepresentation or the City's obligation to perform the City obligations under this Agreement.

G. Costs of Escrow and Closing.

1. Prorations. All revenues and all expenses of each Development Parcel, including but not limited to, water and utility charges, amounts payable under any leases, annual permits and/or inspection fees (calculated on the basis of the respective periods covered thereby), and other expenses normal to the ownership, use, operation and maintenance of the Property shall be prorated as of 12:01 a.m. on the Closing Date. It is acknowledged that any revenue or expense amount which cannot be ascertained with certainty as of Closing shall be prorated on the basis of the Parties' reasonable estimate of such amount, and shall be the subject of a final proration forty-five (45) days after Closing, or as soon thereafter as the precise amounts can be ascertained. A statement setting forth such agreed-upon prorations signed by City and Developer shall be delivered to Escrow Agent. Real property taxes shall be paid in accordance with Ch. 84.60 RCW. Any outstanding LID or other assessments against any Development Parcel shall be satisfied in full by the City at Closing. Any rents collected by Developer after Closing shall be retained by Developer and the City shall not be entitled to any credit for the same.

2. Title Insurance. City shall pay the premium for the standard coverage component of the extended owner's policy of title insurance required under Section 4.6(c) hereof. Developer shall pay the costs of any new surveys, the premium for any extended coverage component of the extended owner's policy of title insurance requested by Developer, and all recording costs. The City shall complete and execute the real estate excise tax affidavit and shall pay any excise tax due in connection with this transaction. Developer and the City shall share equally the cost of escrow fees in connection with any Closing.

H. Recordation. Provided that Escrow Agent has not received prior written notice from either Party that an agreement of either Party made hereunder has not been performed, or to the effect that any condition set forth herein has not been fulfilled, or that Developer has elected to terminate its rights and obligations hereunder pursuant to Sections 9.2 or 9.3 hereof, and further provided that the Title Company has issued or is unconditionally prepared and committed to issue to Developer the Title Policy, then Escrow Agent is authorized and instructed at 8:00 a.m. (or as soon thereafter as possible) on the Closing Date, pursuant to joint escrow instructions to be executed by Developer and City, to:

1. Record the Deed(s) in the official records of King County, Washington;

2. Deliver the other documents described in Section 4.5(C) hereof;
3. Record any reconveyance documents delivered by City pursuant to Section 4.5(C) hereof.

I. Delivery of Documents. Upon Closing, all statements and documents to be delivered to Developer shall be delivered to:

Tukwila Village Associates, LLC
c/o Pacific Northern Construction Company, Inc., Manager
201 - 27th Avenue SE, Building A, Suite 300
Puyallup, WA 98374

Upon the Closing, all statements and documents to be delivered to City shall be delivered to:

City of Tukwila
Office of the Mayor
6200 Southcenter Boulevard
Tukwila, Washington 98188

J. Real Estate Commissions. Except as set forth below, each Party represents and warrants that it has not entered into any agreement, and has no obligation, to pay any real estate commission in connection with the transaction contemplated by this Agreement. If a real estate commission is claimed through either Party in connection with the transaction contemplated by this Agreement, then the Party through whom the commission is claimed shall indemnify, defend and hold the other Party harmless from any liability related to such commission. The Parties' respective obligations to indemnify each other under this Section 4.8 shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

ARTICLE 5 CONSTRUCTION OF THE DEVELOPMENT

Section 5.1 Basic Obligations.

Developer shall cause construction of the Improvements in accordance with the terms of this Agreement. Subject to Force Majeure, Developer shall cause commencement and completion of construction of the Improvements associated with each Development Phase within the times set forth in Section 9.4. Developer shall perform the terms of this Agreement in accordance with the following standards:

A. All construction hereunder shall comply with, and be performed in accordance with, the Design Guidelines, the Approved Site Plan, this Agreement and all applicable Environmental Standards, free and clear of all liens (other than in connection with approved Financing Obligations).

B. Developer shall cause all work performed in connection with construction of the Development to be performed in compliance with: (1) all applicable Laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies; and (2) all rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency of the City now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each and every required permit, license, approval or other authorization that may be required by any governmental agency having jurisdiction, and Developer shall be responsible for the procurement and maintenance thereof, as may be required of Developer and all Persons engaged in work on the Property.

C. Developer agrees to use its reasonable best efforts to seek and obtain all permits and financing necessary to construct the Improvements with respect to each Development Phase and shall thereafter diligently design, construct and complete the Improvements in a good and workmanlike manner and of good quality.

D. Developer agrees to use materials that are of high quality and workmanship. Developer agrees to utilize high quality construction materials consistent with Class A mixed-use development and market rate residential rental apartment properties, notwithstanding that a portion of the rental apartments included in the development are intended to be restricted and affordable to low- to moderate-income individuals and households. Examples of the quality of such construction materials include Developer's Arrowhead Gardens Apartments development in West Seattle and Victoria Park Apartments development in Lake City. Materials such as synthetic stucco, plastic storefront window systems, standard cinder block, aluminum/plastic/vinyl siding, or faux cladding shall not be used on any building facades.

Section 5.2 Developer-Performed Street, Utilities and Related Work.

Without limiting the generality of the obligations set forth in Section 5.1 hereof, as part of the construction of the Improvements associated with the first Development Phase, Developer shall cause performance of Developer-performed street, City utility (storm water) and non-City utility (all other utilities), and work related to the Street Vacation Agreements as set forth at Section 5.3 hereof (collectively, the "**Developer Infrastructure Work**"). The Parties acknowledge and agree as follows with respect to the performance of such Developer Infrastructure Work:

A. The performance of the Developer Infrastructure Work is an integral component of the overall construction of the Development;

B. Close coordination is required between performance of the Developer Infrastructure Work and the simultaneous construction of the first Development Phase and the proposed future development of the Library Parcel;

C. Timely completion of the Developer Infrastructure Work contemporaneous with development of the first and second Development Phases is essential to the successful development of the Property; and

D. Performance of the Developer Infrastructure Work in accordance with the requirements of the Street Vacation Agreements is essential to the successful development of the Property.

Section 5.3 Description of Developer Infrastructure Work.

A. Street Improvements. Developer shall construct all street improvements depicted in the Approved Site Plan in accordance with standard City requirements to construct public infrastructure and frontage improvements abutting the Development Parcels. Developer shall, in addition, construct such street improvements as may be set forth in, and in accordance with, the terms and conditions of the Street Vacation Agreements.

B. Storm Water Utilities. Developer shall construct all storm water utility system improvements depicted in the Approved Site Plan or Approved Construction Plans in accordance with standard City requirements, and, in addition, shall construct such improvements as may be set forth in, and in accordance with, the terms and conditions of the Street Vacation Agreements.

C. Other Utilities. Developer shall coordinate and cause relocation, adjustment, installation, and construction of all other utility system improvements (natural gas, electric, telecommunications, cable, sanitary sewer and water) as depicted in the Approved Site Plan or Approved Construction Plans so that such work is substantially performed and completed prior to completion of construction of the first and second Development Phases.

D. South 144th Street. The City's Capital Improvement Plan (CIP) includes a project to rebuild South 144th Street between Tukwila International Boulevard and 42nd Avenue South. This project is currently unfunded, but the City agrees to commence a study to evaluate the project and design the improvements. The City agrees to make this a high priority project and to actively seek outside funding to design and construct the improvements for the City's South 144th Street CIP project. If the City is successful in receiving funding to construct the City's South 144th Street CIP project, such that Developer does not have to construct such frontage improvements, such frontage improvement costs will not be taken into account in the Residual Land Value Analysis.

E. Other Infrastructure Improvements. Certain other infrastructure costs may be necessitated based on certain pending decisions by Developer such as the introduction of parallel parking within the City right of way along a portion Tukwila International Boulevard separated from traffic by channelization, or the relocation of all or portions of the existing crosswalk across Tukwila International Boulevard to better align the crosswalk with a major pedestrian access point serving the Development.

Section 5.4 Construction Pursuant to Plans.

A. General Requirement. Developer shall cause construction of the Improvements for each Development Phase in accordance with the Approved Site Plan (or modifications thereto permitted by this section), the approved Phased Development Plan, and the terms and conditions of the Development Agreement and all City and other governmental approvals and this Agreement. Nothing in this section shall preclude or modify Developer's obligation to

obtain any required City approval of changes in the Approved Site Plan or Phased Development Plan.

B. “As Built” Plans. Within forty-five (45) days after issuance of an Estoppel Certificate of Completion for the Development, Developer shall submit to the City a complete set of “as built” plans for any Improvements that will be dedicated or conveyed to the City.

Section 5.5 Estoppel Certificate of Completion.

For each Development Phase, when the obligations of Developer under this Agreement as to each such Phase have been met, Developer may request issuance of, and upon such request the City shall issue, a certificate to such effect (an “Estoppel Certificate of Completion”) in a form recordable in the Official Records of the County of King, which the City shall do within thirty (30) days of such a request that meets the above requirements.

Except as set forth in the following paragraph, an Estoppel Certificate of Completion shall constitute a conclusive determination that the covenants in this Agreement with respect to the obligations of Developer, as to such Development Phase, to construct the Improvements and to pay the Purchase Price, have been met and that such covenants no longer constitute covenants that run with and burden the Development Parcels subject to such Estoppel Certificate of Completion. Such certification shall not be deemed a notice of completion under the Tukwila Municipal Code, nor shall it constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of deed of trust securing money loaned to finance the Development or any portion thereof, except as otherwise independently provided in such deed of trust.

An Estoppel Certificate of Completion shall not constitute a conclusive determination of the satisfaction of the requirements of the obligation and indemnification set forth in Section 4.8(J), 6.3(A), 6.4(c), 9.7 or 10. which shall expressly survive issuance of an Estoppel Certificate of Completion. An Estoppel Certificate of Completion shall not relieve Developer of its covenants pursuant to Section 6.2 (Operating Covenants) or Section 2.8(E) (CC&Rs) hereof, which covenants shall expressly survive issuance of an Estoppel Certificate of Completion.

Upon issuance of an Estoppel Certificate of Completion, Developer shall cause the same to be recorded upon the Development Parcels subject to the Estoppel Certificate of Completion.

Section 5.6 Entry by the City.

Developer shall permit the City, through its officers, agents, or employees, to enter the Property at all reasonable times to inspect the construction work with respect to the Improvements in each Development Phase to determine that such work is in conformity with the Approved Site Plan, the Phased Development Plan, the Development Agreement or to inspect the Property for compliance with this Agreement. The City is under no obligation to (a) supervise construction, (b) inspect the Property, or (c) inform Developer of information obtained by the City during any inspection, except that the City shall inform Developer of any information it obtains or discovers during inspection that could reasonably or foreseeably affect the rights or obligations of a Party under this Agreement. Developer shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this Section 5.6 are in

addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority, and such special or additional rights hereunder shall terminate with respect to each Development Phase upon such time as Developer is entitled to issuance of an Estoppel Certificate of Completion for such Development Phase.

ARTICLE 6 OBLIGATIONS DURING AND AFTER CONSTRUCTION

Section 6.1 Applicability. Developer shall comply with the provisions of this Article 6: (a) for the applicable time period specified in the various sections of this Article 6; or (b) if no specified time period is set forth in a particular section, throughout the Term of this Agreement.

Section 6.2 Additional Operating Covenants for Retained Improvements.

A. Expansion, Reconstruction or Demolition. For a period of twenty (20) years following issuance of an Estoppel Certificate of Completion, Developer shall not cause or permit any material change in use of the Retained Improvements without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 6.3 General Indemnity and Insurance.

A. General Indemnity. With the exception that neither this subsection nor any other provisions of this Agreement shall be construed to require indemnification by Developer to a greater extent than allowed under the Laws and policies of the State of Washington, Developer shall indemnify, defend (with counsel reasonably acceptable to the City), and hold harmless the Indemnified Parties against all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Developer's or the Contractors' performance or non-performance under this Agreement or arising in connection with entry onto, ownership of, occupancy in, or construction on the Property by Developer, the Contractors, or the Tenants. This indemnity obligation shall not extend to any claim to the extent such claim is attributable to or arising from the applicable Indemnified Party's negligence or the City's failure to perform its obligations under this Agreement. Developer's obligation to indemnify under this Section 6.3(A) shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

The indemnification, defense and hold harmless obligations of Developer under this subsection and elsewhere in this Agreement or the Exhibits hereto (sometimes collectively, the "**Indemnification Obligations**") shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which Developer is required to carry under this Agreement. In claims against any of the Indemnified Parties by an employee of Developer, or anyone directly or indirectly employed by Developer or anyone for whose acts Developer may be liable, the Indemnification Obligations shall not be limited by amounts or types of damages, compensation or benefits payable by or for Developer or anyone directly or indirectly employed by Developer or anyone for whose acts Developer may be liable. The Indemnification Obligations of Developer shall be independent of and in addition to the Indemnified Parties' rights under the insurance to be provided by Developer under this

Agreement. The duty to defend hereunder is wholly independent of and separate from the duty to indemnify.

B. Required Insurance Coverage. Developer shall cause to be maintained and kept in force, at the sole cost and expense of Developer, the following insurance for the Developer Responsibility Area:

1. Comprehensive General Liability Insurance with limits of not less than \$1,000,000 per occurrence and a combined single limit of \$2,000,000 in the aggregate plus Comprehensive Excess Liability Insurance of not less than \$5,000,000 for Bodily Injury and Property Damage, including premises operations, underground and collapse, completed operations, contractual liability, independent contractor's liability, broad form property damage and personal injury, and covering, without limitation, all liability to third parties arising out of or related to Developer's performance of its obligations under this Agreement or other activities of Developer at or about the Property and the Development.

2. Vehicle Liability Insurance with limits of not less than \$1,000,000 per occurrence and a combined single limit of \$2,000,000 in the aggregate for Bodily Injury and Property Damage, including any automobile or vehicle whether hired or owned by Developer.

3. Worker's Compensation Insurance in an amount not less than the statutory limits.

C. General Contractor's Insurance. Developer shall cause the General Contractor to maintain insurance of the types and in at least the minimum amounts described in subsections (1), (2) and (3) of Section 6.3(B) hereof, and shall require that such insurance shall meet all of the general requirements of subsection (D) of this Section 6.3.

D. General Insurance Requirements.

1. In General. The insurance required by this Section 6.3 shall be provided under an occurrence form, and Developer shall maintain (or cause to be maintained) such coverage continuously throughout the Term of this Agreement (except for the General Contractor's insurance requirement set forth in subsection (C) of this Section 6.3, which shall be maintained until Developer is entitled to issuance of an Estoppel Certificate of Completion). Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be twice the occurrence limits specified above.

2. Additional Insureds. The insurance policies required pursuant to this Section 6.3 (other than Worker's Compensation insurance) shall be endorsed to name as additional insureds the City and their respective officials (appointed and elected), officers, agents, attorneys and employees (collectively, the "**Additional Insureds**").

3. Additional Requirements. All insurance policies shall contain:

a. An agreement by the insurer to give the City at least thirty (30)

days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies;

b. An agreement by the insurer that such policies are primary and non-contributing with any insurance that may be carried by the City;

c. A provision that no act or omission of Developer shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained;

d. A waiver by the insurer of all rights of subrogation against the Additional Insureds in connection with any loss or damage thereby insured against;

e. Upon the City's request at any time during the Term of this Agreement, Developer shall provide certificates of insurance, in form and with insurers reasonably acceptable to the City, evidencing compliance with the requirements of this section, and shall provide complete copies of such insurance policies, including a separate endorsement naming the Additional Insureds as additional insureds.

All insurance companies providing coverage pursuant to this Section 6.3 shall be insurance organizations authorized by the Insurance Commissioner of the State of Washington to transact the business of insurance in the State of Washington, and shall have an A. M. Best's rating of not less than "A:VII".

Section 6.4 Hazardous Materials.

A. Basic Developer Obligations. Developer shall keep and maintain Developer Responsibility Area in compliance with, and shall not cause or permit Developer Responsibility Area to be in violation of, any Environmental Standards. Developer shall not use, generate, manufacture, store or dispose of in, on, or under Developer Responsibility Area or transport to the Developer Responsibility Area any Hazardous Materials, except such of the foregoing as may be legally and customarily kept and used in and about the construction and operation of like kind mixed use retail and residential developments.

B. Notification to City; City Participation. Developer shall immediately notify and advise the City in writing if at any time it receives written notice of: (1) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Developer or the Developer Responsibility Area pursuant to any Environmental Standards; (2) all claims made or threatened by any third party against Developer or the Developer Responsibility Area relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Contaminants (the matters set forth in clauses (1) and (2) above are referred to as "**Hazardous Materials Claims**"); and (3) the Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Developer Responsibility Area that likely could cause part or all of the Developer Responsibility Area to be classified as meeting or exceeding clean-up levels (contaminant levels requiring Remedial Action) under Environmental Standards, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Developer Responsibility Area under any Environmental Standards. The City shall have the right to join and participate in, as a party if it

so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims.

C. Developer Indemnification. Developer shall indemnify, defend (with counsel reasonably acceptable to the City), and hold harmless the Indemnified Parties from and against any loss, damage, cost, expense or liability the City may incur directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, or disposal by Developer, its Contractors, or the Tenants of Contaminants in, on, under, or emanating from the Developer Responsibility Area, including without limitation: (1) the costs of any required or necessary Remediation of the Developer Responsibility Area, and the preparation and implementation of any closure, Remedial or other required plans; and (2) all reasonable costs and expenses incurred by the City in connection with clause (1), including but not limited to reasonable attorneys' fees. Developer's obligation to indemnify under this Section 6.4(C) shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

Section 6.5 Taxes.

Developer shall pay when due all real property taxes and assessments assessed and levied on the Development Parcels acquired by Developer that are attributable to the period following the Closing and shall remove any levy, lien or attachment made on any other portion of the Developer Responsibility Area. Developer may, however, contest the validity or amount of any tax, assessment, or lien on any portion of the Developer Responsibility Area.

Section 6.6 Damage or Destruction to Developer Responsibility Area.

Developer shall promptly notify the City of any Casualty with respect to the Developer Responsibility Area, and shall diligently seek to procure all insurance proceeds that may be available to compensate for such Casualty. To the extent economically feasible as a result of the availability of insurance proceeds and any other funds Developer elects to provide for such purpose, Developer shall promptly commence and diligently pursue restoration or replacement of the portion of the Developer Responsibility Area that was damaged by such Casualty. To the extent economically feasible as a result of the availability of insurance proceeds and any other funds Developer elects to provide for such purpose, the restored or replaced property shall be substantially equal in value, quality, and use to the value, quality, and use of such damaged property immediately before the Casualty.

Section 6.7 CC&Rs Obligations.

Developer shall comply with and enforce the terms of the CC&Rs with respect to the Developer Responsibility Area. In addition to any rights and remedies provided to the City under this Agreement, the City and Developer shall have the right to enforce the terms of the CC&Rs as fully provided in the CC&Rs.

ARTICLE 7
ASSIGNMENT AND TRANSFERS

Section 7.1 Definition of Transfer. As used in this Article 7, the term “Transfer” means:

A. Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of or with respect to a Development Parcel or any part thereof or any interest therein or of the Improvements constructed thereon, or any contract or agreement to do any of the same; or

B. Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any legal or equitable ownership interest in Developer or any partner, member or shareholder of Developer, or any contract or agreement to do any of the same.

Section 7.2 Purpose of Restrictions on Transfer. This Agreement shall be exclusively between the City and Developer. This Agreement is entered into solely for the purpose of the development and subsequent use of the Property and the use and operation of the Plaza Parcel in accordance with the terms of this Agreement. The qualifications and identity of Developer are of particular concern to the City, in view of:

A. The importance of the redevelopment, use, operation and maintenance of the Development to the general welfare of the community; and

B. The fact that a change in ownership or control of the owner of a Development Parcel, or any other act resulting in a change in ownership of the Parties in control of Developer, is for practical purposes a transfer or disposition of Development Parcel and the Development.

It is because of the qualifications and identity of Developer that the City is entering into this Agreement with Developer and that Transfers are permitted only as provided in this Agreement.

Section 7.3 Prohibited Transfers.

The limitations on Transfers set forth in this Section 7.3 shall apply to each Development Parcel until the Developer is entitled to issuance of an Estoppel Certificate of Completion for the Improvements upon said Development Parcel. Except as expressly permitted in this Agreement, Developer represents and agrees that Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the City. Any Transfer made in contravention of this Section 7.3 shall be void and shall be deemed to be a default under this Agreement, whether or not Developer knew of or participated in such Transfer.

Section 7.4 Permitted Transfers.

Notwithstanding the provisions of Section 7.3, the following Transfers shall be permitted (subject to satisfaction of all applicable conditions to such Transfer):

A. Any Transfer creating a Security Financing Interest consistent with the Financing Plan approved by the City pursuant to Section 2.15 (as demonstrated to the City’s reasonable satisfaction), or otherwise consistent with the provisions of Section 8.1.

B. Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest.

C. Any Transfer to another Washington limited liability company in which Developer is the sole manager or managing member with majority ownership interest (as demonstrated to the City’s reasonable satisfaction), so long as the City first reasonably determines that such entity has and will maintain sufficient net worth to complete the Development as contemplated by this Agreement.

D. Any Transfer of Development Parcels consisting of a single Development Phase to a Washington limited partnership in which Developer, or another Washington limited liability company in which Developer is the sole manager or managing member with majority ownership interest (as demonstrated to the City’s reasonable satisfaction), is the sole or managing general partner, so long as the City first reasonably determines that the such entity has and will maintain sufficient net worth to complete the Development Phase as contemplated by this Agreement..

E. Developer is currently owned by the Senior Housing Assistance Corporation (“SHAC”) and Pacific Northern Construction Company, Inc. (“PNCC”). Any Transfer of any or all of SHAC or PNCC ownership or management rights with respect to Developer to any existing shareholders, key employees or new or existing wholly-owned subsidiaries or other entities owned and controlled by SHAC or PNCC, such that SHAC, PNCC and their Affiliates continue to own and control, directly or indirectly, 100% of Developer.

Section 7.5 Other Transfers in City’s Sole Discretion.

Any Transfer not permitted pursuant to an express provision of Section 7.4 shall be subject to prior City approval in accordance with this Section 7.5, which the City may grant or deny in its sole discretion. In connection with such a proposed Transfer, Developer shall first submit to the City information regarding such proposed Transfer, including the proposed documents to effectuate the Transfer, a description of the type of the Transfer, and such other information as would assist the City in considering the proposed Transfer, including where applicable, the proposed transferee’s financial strength and the proposed transferee’s experience, capacity and expertise with respect to the development, operation and management of mixed use developments containing a Class A retail component similar to the Development. The City shall approve or disapprove the proposed Transfer, in its sole discretion, within sixty (60) days of the receipt from Developer of the information specified above. The City shall specify in writing the basis for any disapproval. A failure by the City to act within such sixty (60) day period shall constitute a disapproval of the proposed Transfer.

Section 7.6 Effectuation of Permitted or Otherwise Approved Transfers.

A. Not less than thirty (30) days prior to the intended effectiveness of a Transfer described in Section 7.4, Developer, or the holder of a security interest requesting a Transfer

pursuant to Section 7.4 (B) (hereinafter “**Secured Party**”), shall deliver to the City a notice of the date of effectiveness of the intended Transfer, a description of the intended Transfer, and such information about the intended Transfer and the transferee as is necessary to enable the City to determine that the intended Transfer meets the standards for a Transfer under Section 7.4 as applicable. Unless the City notifies Developer prior to the specified date of the intended Transfer that the intended Transfer does not meet the standards for a Transfer under Section 7.4, as applicable, stating with reasonable specificity the reasons for such conclusion, the intended Transfer shall be permitted.

B. Within five (5) Business Days after the completion of any Transfer permitted pursuant to Section 7.4, or approved in the City’s sole discretion pursuant to Section 7.5, Developer shall provide the City with notice of such Transfer.

C. No Transfer otherwise permitted pursuant to Section 7.4, or approved in the City’s sole discretion pursuant to Section 7.5, shall be permitted unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the City and in form recordable among the land records of the County of King, expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of Developer under this Agreement and any ancillary agreements entered into by Developer pursuant to this Agreement with respect to the Development Parcels and the Development being transferred; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation. Anything to the contrary notwithstanding, the holder of a Security Financing Interest whose interest in the Property is acquired by, through or under a Security Financing Interest or is derived immediately from any holder thereof shall not be required to give to the City such written agreement until such holder or other person is in possession of the Property, or applicable portion thereof, or entitled to possession thereof pursuant to enforcement of the Security Financing Interest

D. In the absence of specific written agreement by the City (which the City may grant or withhold in its sole discretion), no Transfer permitted by this Agreement or approved by the City shall be deemed to relieve the transferor from any obligations under this Agreement.

ARTICLE 8 SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 8.1 Security Financing Interests; Permitted and Prohibited Encumbrances.

Mortgages, deeds of trust, and other real property security instruments are permitted to be placed upon the Property only as authorized by this Section 8.1. Any security instrument and related interest authorized by this Section 8.1 is referred to as a “**Security Financing Interest.**” Developer shall promptly notify the City of any Security Financing Interest that has been or will be created or attached to a Development Parcel.

Until Developer is entitled to issuance of an Estoppel Certificate of Completion, Developer may place mortgages, deeds of trust, or other reasonable methods of security on the Property only for the purpose of securing any Approved Development Loan.

Following the time Developer is entitled to issuance of an Estoppel Certificate of Completion, Developer may place any mortgages, deeds of trust, and other real property security interest it desires on the Property.

Section 8.2 Holder Not Obligated to Construct.

The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any Improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in conveyances from the City to Developer evidencing the realty comprising the Property or any part thereof be construed so to obligate such holder. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided for or authorized by this Agreement.

Section 8.3 Notice of Default and Right to Cure.

Whenever the City, pursuant to its rights set forth in Article 9, delivers any notice or demand to Developer with respect to the commencement, completion, or cessation of the construction of a Development Phase, the City shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Property or any portion thereof a copy of such notice or demand. Each such holder shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Development Phase and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Development Phase (beyond the extent necessary to conserve or protect such Improvements or construction already made) without first having expressly assumed in writing Developer's obligations to the City relating to the Development Phase under this Agreement. In such event, the holder must agree to complete the Development Phase in the manner provided in this Agreement and such holder shall assume all rights and obligations of Developer under this Agreement with respect to such Development Phase and shall be entitled, upon written request made to the City, to an Estoppel Certificate of Completion for the Development Phase from the City.

Section 8.4 Failure of Holder to Complete Development.

In any case where six (6) months after default by Developer in completion of construction of a Development Phase under this Agreement, the holder of record of any Security Financing Interest, having first exercised its option to construct, has not proceeded diligently with construction, the City shall be afforded those rights against such holder it would otherwise have against Developer under this Agreement.

Section 8.5 Right of City to Cure.

In the event of a default or breach by Developer of a Security Financing Interest prior to the completion of a Development Phase, and if the holder has not exercised its option to

complete the Development Phase, the City may, upon prior written notice to Developer, cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Development Phase to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any Security Financing Interest, and the City shall execute from time to time any and all documentation reasonably requested by Developer or holder to effect such subordination.

Section 8.6 Right of City to Satisfy Other Liens.

After the Closing and after Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Property or any portion thereof, and has failed to do so, in whole or in part, the City shall, upon prior written notice to Developer, have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as Developer in good faith shall contest the validity or amount therein and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 8.7 Holder to be Notified.

Unless this requirement is waived in writing by the City, Developer shall insert each term contained in this Article 8 into each Security Financing Interest or shall procure acknowledgement of such terms contained in this Article 8 by each holder of a Security Financing Interest prior to its coming into any security right or interest in the Property or portion thereof.

Section 8.8 Modifications.

If a holder of a Security Financing Interest should, as a condition of providing financing for development of all or a portion of the Development, request any modification of this Agreement in order to protect its interests in the Development or this Agreement, the City shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the Parties under this Agreement.

ARTICLE 9
DEFAULT AND REMEDIES

Section 9.1 Application of Remedies.

This Article 9 shall govern the Parties' rights to terminate this Agreement and the Parties' remedies for breach or failure under this Agreement.

Section 9.2 No Fault of Parties.

A. Bases For No Fault Termination. The following events constitute a basis for a Party to terminate this Agreement without the fault of the other:

1. Street Vacation Agreement. Developer, the third parties and the City, despite good faith efforts, are unable to reach mutual agreement upon a Street Vacation Agreement in accordance with Section 2.6 of this Agreement.
2. Final Street Vacation Approval. The Final Street Vacation Approval, despite good faith efforts, cannot be accomplished within the time period set forth in Section 2.6 of this Agreement.
3. Site Plan Approval. Developer, despite good faith efforts, is unable to obtain an Approved Site Plan pursuant to Section 2.4 of this Agreement.
4. Boundary Line Adjustment. Developer, despite good faith efforts, is unable to obtain preliminary or final approval of a Boundary Line Adjustment pursuant to Section 2.5 of this Agreement that conforms to the Preliminary or Approved Site Plans.
5. Development Agreement. Developer, despite good faith efforts, is unable to obtain City approval of a Development Agreement in conformance with Section 2.7 of this Agreement.
6. CC&Rs. The Parties, despite good faith efforts, are unable to reach agreement upon the CC&Rs pursuant to Section 2.8(E) of this Agreement.
7. Phased Development Plan. The Parties, despite good faith efforts, are unable to reach agreement upon a Phased Development Plan pursuant to Section 2.4 of this Agreement.
8. Temporary Construction Easement. Developer, despite good faith efforts, is unable to obtain City approval of a Temporary Construction Easement pursuant to Section 2.10 of this Agreement.
9. Construction Contract. Developer, despite good faith efforts, is unable to obtain City approval of a Construction Contract pursuant to Section 2.11(A) of this Agreement.
10. Financing Plan. The Parties, despite good faith efforts, are unable to reach agreement upon a Financing Plan pursuant to Section 2.14 of this Agreement.
11. Agreement with KCLS. Developer, despite good faith efforts, is unable to agree on the terms of the KCLS Development Agreement with the KCLS for, among other things, construction of the Library Off-Site Infrastructure and reimbursement of an allocable share of the cost thereof; provided, that the KCLS timely elects to enter into an agreement with the City to acquire the Library Parcel in accordance with Section 2.9 of this Agreement.
12. Design Document Approval. Developer, despite good faith efforts, is unable to obtain Approved Construction Plans pursuant to Section 2.7(A)(2) and ___ of this Agreement.

13. Outdoor Plaza. The Parties, despite good faith efforts, are unable to reach agreement upon a Statement of Purpose and Design for the Plaza pursuant to Section 2.8(B) of this Agreement.

14. Commons. The Parties, despite good faith efforts, are unable to reach agreement upon a Statement of Purpose and Design for the Commons pursuant to Section 2.8(C) of this Agreement.

15. Performance and Payment Bond. Developer, despite good faith efforts, is unable to obtain City approval of its performance and payment bond pursuant to Section 2.11(D) of this Agreement.

16. Residual Land Value Analysis. The Parties, despite good faith efforts, are unable to reach agreement upon the residual land value analysis pursuant to Section 4.4 of this Agreement.

17. Purchase Price. The Parties, despite good faith efforts, are unable to reach agreement upon a Purchase Price pursuant to Section 4.4 of this Agreement.

18. Mutual Agreement. Developer and City (and any third party) are unable, despite good faith efforts, to come to mutual agreement upon any agreement or understanding that is material to this Agreement and for which mutual agreement is required under this Agreement.

B. Termination Notice; Effect of Termination. Upon the happening of an event described in Section 9.2(A), and at the election of either Party, this Agreement may be terminated by written notice to the other Party or the Parties may mutually agree to renegotiate the terms and conditions of this Agreement pursuant to Section 9.10 herein. Upon a termination pursuant to Section 9.2(A), any costs incurred by a Party in connection with this Agreement and the Development shall be completely borne by such Party and neither Party shall have any rights against or liability to the other, except with respect to: (1) disposition of the Deposit as set forth in Section 2.2, as applicable; and, (2) the survival of certain terms of this Agreement as provided in Section 9.8.

Section 9.3 Fault of City.

A. City Event of Default. Except as to events constituting a basis for termination under Section 9.2, each of the following events, if uncured after expiration of the applicable cure period, shall constitute a “City Event of Default”:

1. Except as provided in Section 9.2, the City without good cause fails to convey the Property within the time and in the manner specified in Article 4 and Developer is otherwise entitled to such conveyance.

2. The City breaches any other material provision of this Agreement.

B. Notice and Cure; Remedies. Upon the happening of an event described in Section 9.3(A), Developer shall first notify the City in writing of its purported breach or failure. The

City shall have sixty (60) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such sixty (60) day period and the City has commenced the cure within such sixty (60) day period and thereafter is diligently working in good faith to complete such cure, the City shall have such longer period of time as may reasonably be necessary to cure the breach or failure. Notwithstanding anything to the contrary herein, if the City and Developer are in good faith disputing whether the City has caused a breach or failure of performance of this Agreement, then the City shall not be deemed to have caused such breach or failure of performance until the City has been determined by a court of competent jurisdiction to have caused a breach or failure under this Agreement. If the City does not cure within the applicable cure period set forth above, then the event shall constitute a "City Event of Default," and Developer shall be entitled to the following rights and remedies: (1) terminate in writing this entire Agreement; (2) prosecute an action for damages against the City; (3) seek specific performance of this Agreement against the City; (4) exercise any other remedy against the City permitted by Law or under this Agreement; and/or (5) seek re-negotiation of the Agreement pursuant to Section 9.10 herein.

Section 9.4 Fault of Developer.

A. Developer Event of Default. Except as to events constituting a basis for termination under Section 9.2, each of the following events, if uncured after expiration of the applicable cure period, shall constitute a "Developer Event of Default":

1. Developer does not attempt diligently and in good faith to cause satisfaction of all pre-conditions to Closing set forth in Article 2 and Article 4 with respect to each Development Phase, or Developer does not diligently and in good faith close escrow on the purchase of the affected Development Parcels, in accordance with the time frames set forth in the approved Phased Development Plan.

2. Developer refuses for any reason (including, but not limited to, lack of funds) to accept conveyance from the City of the Property within the time and in the manner specified in Article 4, unless a condition set forth in this Agreement to Developer's obligations to accept conveyance has not been satisfied or waived in writing by Developer.

3. Subject to Force Majeure, Developer fails to construct a Development Phase in the manner and within the timeframes set forth in the Phased Development Plan or Article 5 hereof.

4. Subject to Force Majeure, Developer fails to comply with the following deadlines for a given Development Phase:

a. Developer fails to obtain the issuance of grading, foundation, building, structural, mechanical, electrical, or plumbing permits within thirty (30) days after Closing, unless such permits are withheld by the City without justification;

b. Developer fails to begin grading within sixty (60) days of Closing, unless the grading permit is withheld by the City without justification; or

c. Developer fails to begin foundation construction within ninety (90) days from Closing or to complete construction within eighteen (18) months of Closing.

5. Subject to Force Majeure, Developer fails to comply with the following deadlines:

a. Developer does not submit the first Development Phase for Design Review within ninety (90) days of the Effective Date;

b. Developer does not submit a completed application for the second Development Phase for Design Review within eighteen (18) months of the Effective Date;

c. In the event that the Phased Development Plan provides for more than two (2) Development Phases, Developer does not submit a completed application for Design Review for any subsequent Development Phase within the time period required in the approved Phased Development Plan;

d. As to each Development Phase, Developer does not submit building permit applications to the City within one hundred twenty (120) days of the Design Review approval for such Development Phase, or

e. As to each Development Phase, Developer does not Close and take ownership of the applicable Development Parcel(s) within sixty (60) days of Building Permit approval for such Development Phase.

6. Developer attempts or completes a Transfer except as permitted under Article 7.

7. Developer fails to pay the Purchase Price for the applicable Development Parcel(s), at the time and in the amount required, pursuant to Section 4.4.

8. Developer breaches any material provision of Article 6 or any other material provision of this Agreement.

9. Any representation or warranty of Developer contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the City.

10. A court having jurisdiction shall have made or entered any decree or order (a) adjudging Developer to be bankrupt or insolvent, (b) approving as properly filed a petition seeking reorganization of Developer, seeking any arrangement for Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (c) appointing a receiver, trustee, liquidator, or assignee of Developer in bankruptcy or insolvency or for any of their properties, or (d) directing the winding up or liquidation of Developer.

11. Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a Security Financing Interest) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event.

12. Developer shall have voluntarily suspended its business, or Developer shall have been dissolved or terminated.

13. Developer fails to submit its Deposit within the time period set forth in Section 2.2 herein.

B. Notice and Cure; Remedies. Upon the happening of any event described in Section 9.4(A), the City shall first notify Developer in writing of its purported breach or failure. Developer shall have sixty (60) days from receipt of such notice to cure such breach or failure; provided, however, that if such breach or failure cannot reasonably be cured within such sixty (60) day period and Developer has commenced the cure within such sixty (60) day period and thereafter is diligently working in good faith to complete such cure, Developer shall have such longer period of time as may reasonably be necessary to cure the breach or failure; and provided, further, however, that a default described in Paragraph (9) of Section 9.4(A) shall constitute a Developer Event of Default immediately upon its occurrence without need for notice and without opportunity to cure. Notwithstanding anything to the contrary herein, if Developer and the City are in good faith disputing whether Developer has caused a breach or failure of performance of its obligations under this Agreement, then Developer shall not be deemed to have caused such breach or failure of performance until Developer has been determined by a court of competent jurisdiction to have caused a breach or failure of performance under this Agreement. If Developer does not cure within the applicable cure period set forth above, then the event shall constitute a Developer Event of Default and the City shall be afforded all of the following rights and remedies:

1. Prior to Closing. With respect to a Developer Event of Default occurring prior to the Closing, the City shall be entitled to: (a) terminate in writing this entire Agreement; (b) retain the Deposit as set forth in Section 2.2(B); and (c) exercise the rights and remedies described in Section 9.10. In the alternative, the City may seek to renegotiate the terms and conditions of this Agreement pursuant to Section 9.10 hereof. The above remedies shall constitute the exclusive remedies of the City for a Developer Event of Default occurring prior to the Closing.

2. Between Closing and Estoppel Certificate of Completion. With respect to a Developer Event of Default occurring after the Closing but prior to the date Developer is entitled to issuance of an Estoppel Certificate of Completion, the City shall be entitled to: (a) terminate in writing this Agreement; (b) retain the Deposit to the extent set forth in Section 2.2(C); (c) prosecute an action for damages against Developer; (d) seek specific performance of this Agreement against Developer; (e) exercise the rights and remedies described in Sections 9.5, 9.6, 9.9 and 9.10; and/or (f) exercise any other remedy against Developer permitted by law or under the terms of this Agreement.

3. After Estoppel Certificate of Completion. With respect to a Developer Event of Default occurring after Developer is entitled to an Estoppel Certificate of Completion, the City shall be entitled to: (a) prosecute an action for damages against Developer; (b) seek specific performance of this Agreement against Developer; and/or (c) exercise any other remedy against Developer permitted by law or under the terms of this Agreement.

Section 9.5 Right of Reverter.

A. If this Agreement is terminated pursuant to Section 9.4(B)(2) following the Closing and prior to the time when Developer is entitled to issuance of an Estoppel Certificate of Completion, then the City may, in addition to other rights granted in this Agreement, re-enter and take possession of the Development Parcel with all Improvements thereon, and revert in the City the estate previously conveyed to Developer by the City with respect to the Development Parcel. For each Development Phase, the City's rights under this Section 9.5 shall terminate and be of no further force and effect once Developer is entitled to an Estoppel Certificate of Completion for that particular Development Phase.

B. Such right of reverter shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

1. Any Security Financing Instrument with respect to the Property;
2. Any rights or interests provided in this Agreement for the protection of the holder of a Security Financing Interest with respect to the Property; or
3. The CC&Rs.

C. Upon reverting in the City of title to a Development Parcel as provided in this Section 9.5, the City shall use its best efforts to resell the Development Parcel as soon as possible, in a commercially reasonable manner and consistent with the Tukwila Village Vision Statement, to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the Development on the Development Parcel or such other improvements acceptable to the City in accordance with the uses specified for the Property in the Tukwila Village Vision Statement and in a manner satisfactory to the City. Upon such resale of the Property, the proceeds thereof shall be applied as follows:

1. First, to reimburse the City on its own behalf for all costs and expenses incurred by the City, including, but not limited to salaries of personnel and legal fees incurred in connection with the recapture, management, and resale of the Development Parcel (but less any income derived by the City from any part of the Development Parcel in connection with such management); all taxes, installments of assessments payable prior to resale, and water and sewer charges with respect to the Development Parcel (or, in the event the Development Parcel is exempt from taxation or assessment or such charges during the period of ownership by the City, an amount equal to the taxes, assessments, or charges that would have been payable with respect to the Development Parcel was not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property at the time of reverting of title in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees;

expenditures made or obligations incurred with respect to the making or completion of the Improvements on the Development Parcel or any part thereof; and any amounts otherwise owing the City by Developer and its successors or transferee.

2. Second, to reimburse the City for damages to which it is entitled under this Agreement by reason of the Developer Event of Default.

3. Third, to reimburse Developer, its successor or transferee, up to the amount equal to: the Purchase Price for the Development Parcel, plus the fair market value of the improvements Developer has placed on the Development Parcel, less any gains or income withdrawn or made by Developer from the Development Parcel or the Improvements thereon. Notwithstanding the foregoing, the amount calculated pursuant to this paragraph (3) shall not exceed the fair market value of the Development Parcel together with the Improvements thereon as of the date of the Developer Event of Default which gave rise to the City's exercise of the right of reverter.

4. Any balance remaining after such reimbursements shall be retained by the City as its property.

D. The rights established in this Section 9.5 are to be interpreted in light of the fact that the City will convey the Property to Developer for development and not for speculation.

Section 9.6 Option to Repurchase, Reenter and Repossess.

A. The City shall have the additional right, at its option, to repurchase, reenter, and take possession of a Development Parcel with all Improvements thereon, if this Agreement is terminated pursuant to Section 9.4(B)(2) after the Closing and prior to the time when Developer is entitled to issuance of an Estoppel Certificate of Completion. As to a particular Development Phase, the City's rights under this Section 9.6 shall terminate and be of no further force and effect once Developer is entitled to an Estoppel Certificate of Completion, as to such Development Phase.

Such right to repurchase, reenter, and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

1. Any Security Financing Instrument with respect to the Development Parcel;

2. Any rights or interests provided in this Agreement for the protection of the holder of a Security Financing Interest with respect to the Development Parcel; or

3. The CC&Rs.

B. To exercise its right to repurchase, reenter and take possession with respect to the Development Parcel, the City shall pay to Developer in cash an amount equal to: the Purchase Price for the Development Parcel, plus the lesser of the (1) actual cost and (2) the fair market value of the improvements existing on the Development Parcel at the time of the repurchase, reentry, and repossession, less any gains or income withdrawn or made by Developer from the

Development Parcel or the Improvements thereon, less the amount of any liens or encumbrances on the Development Parcel which the City assumes or takes subject to, less any damages to which the City is entitled under this Agreement by reason of the Developer Event of Default.

Section 9.7 Plans, Work Product and Studies.

If this Agreement is terminated pursuant to Section 9.4, then Developer shall promptly deliver, and assign to the City, all of Developer's rights to its development work product related to any affected Development Phase or Development Parcel, all environmental assessments or documentation, market studies, architectural or engineering plans, drawings and specifications, design and engineering studies, or the like, as of the date of termination. The City shall indemnify, defend, and hold harmless Developer from and against any Developer loss arising out of the City's use of the delivered items.

Section 9.8 Survival.

Upon termination of this Agreement under this Article 9, those provisions of this Agreement that recite that they survive termination of this Agreement shall remain in effect and be binding upon the Parties notwithstanding such termination.

Section 9.9 Rights and Remedies Cumulative.

Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default, provided that any damages or recovery shall be non-duplicative.

Section 9.10 Renegotiation.

In the event that after this Agreement becomes effective one or more of the changes or circumstances set forth below in subsections (A) – (G) occurs, then the City and Developer agree to enter into good faith negotiations to amend this Agreement so as to enable the City and Developer to address, in a manner reasonably acceptable to the City and Developer, such change or other development which formed the basis for the negotiations. The City and Developer recognize that the purpose of the negotiations would be to preserve, to the maximum extent consistent with the original scope, intent and purpose of the City and Developer, the benefits bargained for by each Party.

A. An event of Force Majeure materially alters the ability of a Party to perform its obligations under this Agreement;

B. The State of Washington or any agency thereof or any agency of the federal government require Developer or the City to act in a manner which is inconsistent with any material provision of this Agreement;

C. Any term, article, section, subsection, paragraph, provision, condition, clause, sentence, or other portion of this Agreement, or its application to any person or circumstance,

shall be held to be illegal, invalid or unconstitutional for any reason by any court or agency of competent jurisdiction;

D. Because of a change in circumstances, the City or Developer believes that amendments to this Agreement are necessary or appropriate;

E. The Parties are unable to reach mutual agreement upon a submittal, agreement or understanding under circumstances in which this Agreement requires mutual agreement of the Parties;

F. A provision in this Agreement establishes the right of a Party to seek re-negotiation of this Agreement; or

G. The City and Developer otherwise believe that amendments to this Agreement are necessary or appropriate.

Section 9.11 Communication; Dispute Avoidance; Arbitration.

A. Communication and Discussion. The Parties are fully committed to working with each other throughout the Term of this Agreement and agree to communicate regularly with each other at all times so as to avoid or minimize Disputes. The Parties agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a Dispute. The Parties each commit to resolving a Dispute in an amicable, professional and expeditious manner and agree that in the event a Dispute arises, they will attempt to resolve any such Disputes through discussions between representatives of each Party.

B. Arbitration. If a Dispute cannot be resolved through discussions by each Party's representative, the Dispute shall be submitted to binding arbitration in the City of Tukwila or Seattle, Washington. The arbitration shall be administered by and subject to the arbitration rules of JAMS, which shall appoint a single arbitrator for the purpose of determining all matters submitted to arbitration. The arbitrator shall be a person who, by virtue of background, training, or experience, is knowledgeable in matters of the type covered by the Agreement and the selection of such arbitrator shall be subject to the consent of both Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Either Party may commence arbitration by serving upon the other Party a written demand for arbitration in a manner consistent with the notice requirements of this Agreement, with a copy of same to be delivered to the local JAMS office in Tukwila or Seattle, Washington. To the maximum extent practicable, any arbitration proceeding hereunder shall be concluded within ninety (90) days of the filing of the Dispute with JAMS. No provision of, nor exercise of any rights under, this Section 9.11 shall limit the rights of either Party and the submission of any matter to arbitration shall not suspend the performance of either Party, including (but not limited to) the payment of the Deposit or other amounts due from Developer under this Agreement. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The arbitrator shall be entitled to award compensatory and equitable relief only and may not award punitive damages. Each Party shall pay its own costs and expenses, including attorneys' fees, except when the matter was submitted to arbitration by the substantially non-prevailing Party and is determined by the arbitrator to be frivolous in nature, in which case, upon the request of the substantially prevailing Party, the arbitrator shall be entitled to award costs and expenses, including reasonable attorneys' fees, with respect to

such frivolous matter to the substantially prevailing Party. Judgment upon any award obtained from arbitration may be entered in a court of appropriate jurisdiction.

ARTICLE 10
GENERAL PROVISIONS

Section 10.1 Notices, Demands and Communications.

A. Method. Any notice or communication required hereunder to be given by the City or Developer shall be in writing, and may be given either personally, by facsimile transmission, by reputable overnight courier, or by registered or certified mail, return receipt requested. If delivered by registered or certified mail, a notice shall be deemed to have been given and received on the first to occur of: (1) actual receipt by any of the addressees designated below as a party to whom notices are to be sent; or (2) five (5) days after the registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If delivered personally, by facsimile transmission or by overnight courier, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Either Party may at any time, by giving ten (10) days' written notice to the other Party pursuant to this Section, designate any other address in substitution of the address to which such notice or communication shall be given.

1. Addresses. Notices shall be given to the Parties at their addresses set forth below:

If to the City to:

City of Tukwila
Attn: Mayor
6200 Southcenter Boulevard
Tukwila, Washington 98188
General: 206-433-1800
Fax: 206-433-1833

With a copy to:

City Attorney
City of Tukwila
Kenyon Disend, PLLC
11 Front Street South
Issaquah, Washington 98027-3820
General: 425-392-7090
Fax: 425-392-7071

If to Developer to:

Tukwila Village Development Associates, LLC
Attn: Bryan M. Park, Manager

c/o Pacific Northern Construction Company, Inc.
201 - 27th Avenue SE, Building A, Suite 300
Puyallup, WA 98374
General: (253) 231-5001
Fax: (253) 231-5010

2. Special Requirement. If failure to respond to a specified notice, request, demand or other communication within a specified period would result in a deemed approval, a conclusive presumption, a prohibition against further action or protest, or other adverse result under this Agreement, the notice, request, demand or other communication shall state clearly and unambiguously on the first page, with reference to the applicable provisions of this Agreement, that failure to respond in a timely manner could have a specified adverse result.

Section 10.2 Excusable Delay (Force Majeure).

In addition to specific provisions of this Agreement, and notwithstanding anything to the contrary in this Agreement, neither Party shall be in default in the performance or the failure of performance of its obligations under this Agreement, or in the delay of its performance, where such failure or delay is due to war, insurrection, strikes, lock-outs or other labor disturbances, one or more acts of a public enemy, war, riot, sabotage, blockade, embargo, floods, earthquakes, fires, quarantine restrictions, freight embargoes, lack of transportation, court order, delays or failures of performance by any governmental authority or utility company (so long as the Party seeking the extension has adequately complied with the applicable processing requirements of such governmental authority or utility company), delays resulting from changes in any applicable Laws, rules, regulations, ordinances or codes, or a change in the interpretation thereof by any governing body with jurisdiction, delays resulting from the weather or soils conditions which necessitate delay, delays resulting from litigation (including suits filed by third parties concerning or arising out of this Agreement) or any other cause (lack of funds of Developer, Developer's inability to finance the construction of the Development, and Developer's inability to lease the Improvements, are not causes beyond the reasonable control or without the fault of Developer) beyond the reasonable control or without the fault of the Party claiming an extension of time to perform or an inability of performance. The extension of time for any cause shall be from the time of the event that gave rise to such period of delay until the date that the cause for the extension no longer exists or is no longer applicable, in each case as evidenced by a notice from the Party claiming the extension. An extension of time for the duration of such event will be deemed granted if notice by the Party claiming such extension is sent to the other as to any of the above causes other than Permit Delays, within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice (such extension of time is referred to herein as "Force Majeure"). Times for performance under this Agreement may also be extended in writing by the City and Developer.

Section 10.3 Inspection of Books and Records.

Until twelve (12) months following the issuance of the final Estoppel Certificate of Completion of the last Development Phase of the Development, the City shall have the right at all reasonable times and upon at least twenty-four (24) hours previous notice to inspect and copy (at the City's own expense) the books, records and all other documentation of Developer directly

pertaining to its obligations under this Agreement. Developer shall have the right at all reasonable times to inspect and copy the books, records and all other documentation of the City pertaining to its obligations under this Agreement.

Section 10.4 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any of its provisions.

Section 10.5 Non-Liability of Officials, Employees and Agents.

No member, official, employee or agent of the City shall be personally liable to Developer, or any successor in interest, in the event of a City Event of Default; provided that, the City agrees that it shall indemnify the Developer from and against all suits, actions, claims, causes of action, costs, demands, judgments and liens to the attributable to the intentional misconduct of such member official, employee or agent of the City.

Section 10.6 Time of the Essence; Calculation of Time.

Time is of the essence in this Agreement. Except as otherwise expressly provided herein, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next Business Day.

Section 10.7 Applicable Law; Interpretation; Fair Construction.

This Agreement shall be interpreted under the laws of the State of Washington. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the context may require. The Parties hereby acknowledge and agree that each was properly represented by counsel, that this Agreement has been reviewed and revised by counsel for each Party, and was negotiated and drafted at arms' length so that the judicial rule of construction to the effect that any ambiguities are to be construed against the drafting Party shall be inapplicable in the interpretation of this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the other provisions contained herein in order to achieve the objectives and purposes of this Agreement, and not strictly for or against either Party.

Section 10.8 Severability. If any term, provision, covenant, clause, sentence or any other portion of the terms and conditions of this Agreement or the application thereof to any person or circumstances shall apply, to any extent, become invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect, unless rights and obligations of the Parties have been materially altered or abridged by such invalidation or unenforceability.

Section 10.9 Legal Actions; Venue. In the event any action is brought to enforce any of the provisions of this Agreement, the Parties agree to be subject to the jurisdiction of the King County Superior Court for the State of Washington or, when there is diversity jurisdiction, in the United States District Court for the Western District of Washington. In the event any proceeding

is instituted to interpret or enforce any provision or resolve any Dispute under this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, and any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Agreement, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy courts, including those related to issues unique to bankruptcy law. In the case of the attorneys' fees payable to the City when the City has been represented by legal counsel employed within the City of Tukwila City Attorney's Office, the attorneys' fees shall be measured by the reasonable attorneys' fees that would have been paid by the City had it instead been represented by outside counsel in the matter.

Section 10.10 Binding Upon Successors; Covenants to Run With Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties, and, except as provided in Section 5.5 herein (Estoppel Certificate of Completion), the terms of this Agreement shall constitute covenants running with the land; provided, however, that there shall be no Transfer of any interest by any of the Parties hereto except pursuant to the express terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

Section 10.11 Parties Not Co-Venturers. Nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between City and Developer. The Parties intend that the rights, obligations, and covenants in this Agreement and the collateral instruments shall be exclusively enforceable by the City and Developer, their successors and assigns. No term or provision of this Agreement shall be for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder, except as may be otherwise expressly provided herein.

Section 10.12 Provisions Not Merged With Deed. None of the provisions of this Agreement shall be merged by the deed or any other instrument transferring title to any portion of the Property, and neither the deed nor any other instrument transferring title to any portion of the Property shall affect this Agreement.

Section 10.13 Entire Understanding of the Parties. This Agreement, the recitals, the exhibits referenced herein, and any subsequent agreements or instruments contemplated by this Agreement to be entered into by the Parties, or made an exhibit hereto, constitute the entire understanding and agreement of the Parties with respect to the conveyance of the Property and Development of the same. All recitals and exhibits referenced herein are incorporated into and made a part of this Agreement as though fully set forth herein.

Section 10.14 Approvals.

A. City Actions. Whenever any approval, notice, direction, consent, request, extension of time, waiver of condition, termination, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the Mayor, without further approval by the City Council, and any such action shall be in writing. The City hereby authorizes the Mayor to take the actions described above, as determined appropriate by the Mayor, on behalf of the City; provided that, any amendment or modification of the Agreement not specifically authorized in this Agreement, shall be approved by the City Council.

B. Standard of Approval. Whenever this Agreement grants the City or Developer the right to take action, exercise discretion or make allowances or other determinations, the City or Developer shall act reasonably and in good faith, except where a sole discretion standard is specifically provided.

Section 10.15 Authority of Developer. The persons executing this Agreement on behalf of Developer do hereby covenant and warrant that:

A. Tukwila Village Development Associates, LLC is a duly authorized and existing Washington corporation;

B. Tukwila Village Development Associates, LLC is and shall remain in good standing and qualified to do business in the State of Washington;

C. Tukwila Village Development Associates, LLC has full right, power and authority to enter into this Agreement and to carry out all actions on its part contemplated by this Agreement;

D. The execution and delivery of this Agreement were duly authorized by proper action of Tukwila Village Development Associates, LLC, and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions on Developer's part contemplated by this Agreement, except as have been obtained and are in full force and effect;

E. The persons executing this Agreement on behalf of Tukwila Village Development Associates, LLC have full authority to do so; and

F. This Agreement constitutes the valid, binding and enforceable obligation of Tukwila Village Development Associates, LLC.

Section 10.16 Amendments. Except as may be otherwise provided herein, this Agreement may not be amended or rescinded in any manner except by an instrument in writing signed by a duly authorized representative of each Party hereto, and approved by the City Council.

Section 10.17 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 10.18 Operating Memoranda. The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the Parties find that refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, an “Operating Memorandum”, and collectively, “Operating Memoranda”) approved by the Parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

Operating Memoranda may be executed on the City’s behalf by its Mayor. Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Agreement. Any substantive or significant modifications to the terms and conditions of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 10.16, and must be approved by the City Council.

Section 10.19 Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inference be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is explicitly permitted, such as in the case of a Party being allowed to make a decision in its “sole judgment” or “sole discretion”.

Section 10.20 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto except that there shall be no Transfer of any interest by any of the Parties hereto except pursuant to the express terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired its interest in compliance with the terms of this Agreement, or under law.

Section 10.21 Estoppel Certificates. Except as otherwise provided at Section 5.5 of this Agreement, the City and Developer shall at any time and from time to time, within twenty (20) days after written request by the other, execute, acknowledge and deliver, to the Party requesting same or to any prospective mortgagee, assignee or subtenant designated by Developer, a certificate stating that (i) this Agreement is in full force and effect and has not been modified, supplemented or amended in any way, or if there have been modifications, identifying such modifications; and if this Agreement is not in force and effect, the certificate shall so state; and (ii) to its knowledge, all conditions under the Agreement have been satisfied by the City or Developer, as the case may be, and that no defenses or offsets exist against the enforcement of this Agreement by the other Party, or, to the extent untrue, the certificate shall so state. The Party to whom any such certificate shall be issued may rely on the matters therein set forth and thereafter the Party issuing the same shall be estopped from denying the veracity or accuracy of the same.

Section 10.22 Waiver. No waiver by any Party of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing by the Party granting the waiver; and no such waiver shall be construed to be a continuing 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.

Section 10.23 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either Party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other Party.

Section 10.24 Discrimination. Developer, for itself and its successors and assigns, agrees that during the development of the Property, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, marital status, sexual orientation, handicap or national origin.

Section 10.25 Nonwaiver of Government Rights. The Parties understand that the City by making and entering into this Agreement, is not obligating the City to give governmental approvals or to take particular governmental action, except as otherwise expressly stated herein or in the Development Agreement.

THIS SECTION INTENTIONALLY LEFT BLANK

AS OF THE DATE FIRST WRITTEN ABOVE, the Parties evidence their agreement to the Terms of this Agreement by signing below:

CITY:

CITY OF TUKWILA, a municipal corporation

By: _____
Jim Haggerton
Mayor

Attest:

By: _____
Christy O’Flaherty, City Clerk

Approved As To Form:

By: _____
Shelley Kerslake
City Attorney

DEVELOPER:

TUKWILA VILLAGE DEVELOPMENT
ASSOCIATES, LLC

By: _____
Bryan M. Park
Manager

Exhibit A
General Description of the Property

The parcels A through I as indicated on the map below. Parcel J is not included.

Assessor tax parcel numbers:

152304-9092-02, 152304-9096-08, 152304-9242-01, 155420-0005-09, 155420-0010-02,
155420-0015-07, 155420-0020-00, 155420-0030-08, 155420-0036-02, 155420-0025-00,
155420-0037-01, 155420-0033-05, 155420-0035-03, and
155420-0034-04.

Note: This is not a plat of survey. It is provided as a convenience to identify and locate the land subject to this Agreement with references to streets and other land.

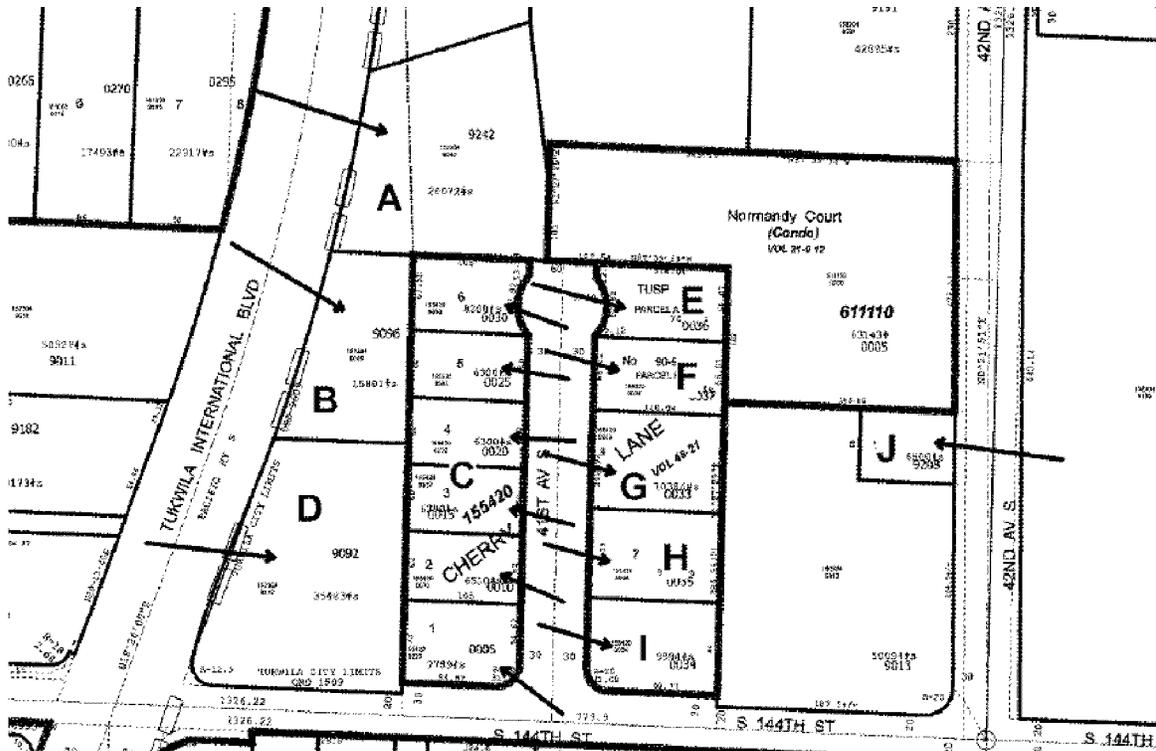


Exhibit A
General Description of the Property
(continued)

The parcels K through Q as indicated on the map below.

Assessor tax parcel numbers:

004000-0145-08, 004000-0146-07, 004000-0180-04, 004000-0191-01, 004000-0194-08,
004000-0196-06, 004000-0198-04

Note: This is not a plat of survey. It is provided as a convenience to identify and locate the land subject to this Agreement with references to streets and other land.

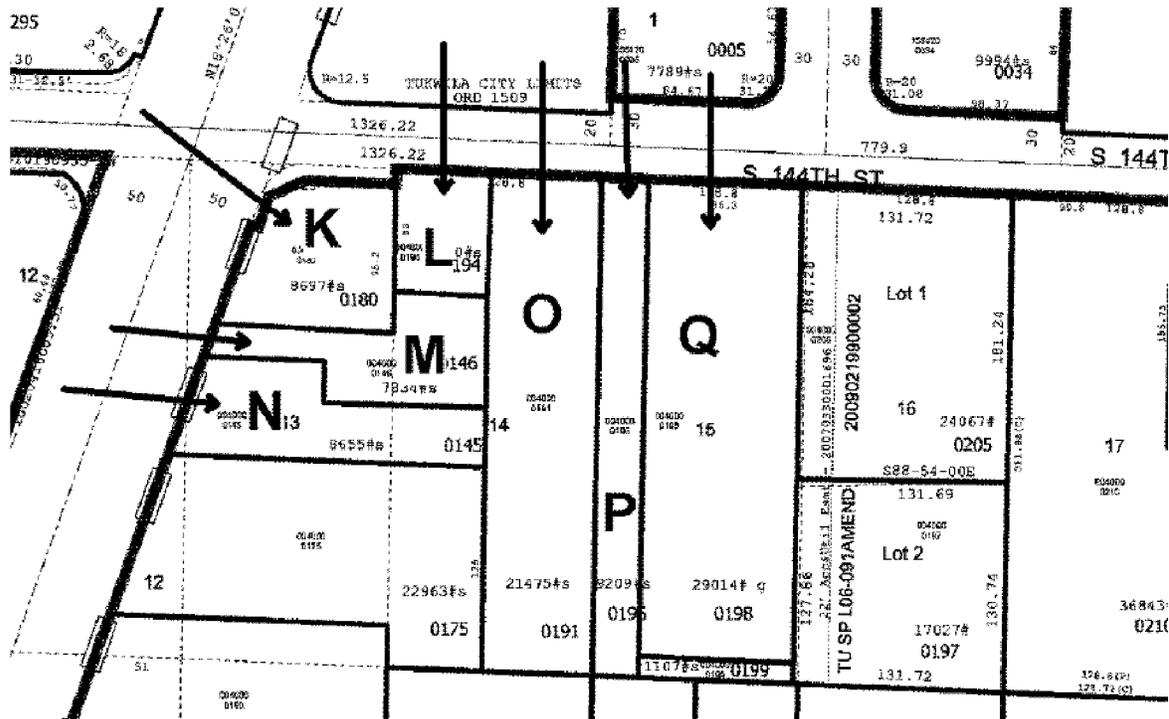


Exhibit A-1

Legal Descriptions of the Property

PARCEL A:

THAT PORTION OF LOT 9 IN BLOCK 3 OF JAMES CLARK'S GARDEN ADDITION TO THE CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 13 OF PLATS, PAGE 12, RECORDS OF KING COUNTY AUDITOR; AND OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 4 EAST W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTH 812.6 FEET OF THE EAST 425.5 FEET OF SAID SOUTHEAST 1/4;
THENCE SOUTH 01°27'30" WEST 200 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;
THENCE SOUTHWESTERLY TO A POINT ON THE EASTERLY LINE OF PACIFIC HIGHWAY SOUTH (STATE ROAD NO. 1), DISTANT SOUTHERLY 250.50 FEET (AS MEASURED ALONG SAID EASTERLY LINE) FROM THE INTERSECTION OF SAID EASTERLY LINE WITH THE NORTH LINE OF THE SOUTH 812.6 FEET OF SAID SOUTHEAST 1/4;
THENCE SOUTHERLY ALONG SAID EASTERLY HIGHWAY LINE TO THE SOUTH LINE OF SAID LOT 9;
THENCE EASTERLY ALONG SAID SOUTH LINE TO THE SOUTHEAST CORNER THEREOF;
THENCE SOUTHERLY TO A POINT ON THE NORTHERLY LINE OF A TRACT CONVEYED TO ZIBA HUNTINGTON BY DEED RECORDED UNDER KING COUNTY RECORDING NO. 412377;
THENCE EASTERLY ALONG SAID NORTH LINE TO A POINT WHICH BEARS SOUTH 01°27'30" WEST FROM THE TRUE POINT OF BEGINNING;
THENCE CONTINUING EAST TO A POINT 405.04 FEET WEST FROM THE EAST LINE OF SAID SOUTHEAST 1/4 OF SOUTH SOUTHWEST 1/4;
THENCE NORTH PARALLEL WITH SAID EAST LINE 65 FEET;
THENCE NORTHWESTERLY TO THE TRUE POINT OF BEGINNING.

PARCEL A-1:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER A STRIP OF LAND 20 FEET IN WIDTH THE SOUTHERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF THE NORTH 398.1 FEET OF THE EAST 525.5 FEET OF THE SOUTH 812.6 FEET OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 4 EAST W.M., 100 FEET DISTANT EAST OF THE NORTHWEST CORNER OF SAID SUBDIVISION;
THENCE SOUTH 01°27'30" WEST 200 FEET TO THE TRUE POINT OF BEGINNING OF THE SOUTHERLY LINE OF THE EASEMENT HEREIN DESCRIBED;
THENCE SOUTHWESTERLY TO A POINT ON THE EASTERLY MARGIN OF PACIFIC HIGHWAY SOUTH (STATE ROAD NO. 1) WHICH POINT IS 250.50 FEET SOUTHERLY AS MEASURED ALONG SAID HIGHWAY FROM A POINT IN THE EAST MARGIN OF SAID HIGHWAY DISTANT 23.40 FEET, MORE OR LESS, WEST OF THE WEST LINE OF THE SUBDIVISION HEREIN DESCRIBED AND ON THE NORTH LINE THEREOF AS THE SAME IS PRODUCED WESTERLY;

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

Exhibit A-1
Legal Descriptions of the Property
(continued)

PARCEL B:

THE NORTH 185.90 FEET OF THE SOUTH 430.9 FEET OF THE WEST 505 FEET OF THE EAST 1,031 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 4 EAST, W.M., LYING EASTERLY OF WASHINGTON STATE HIGHWAY NO. 1 (PACIFIC HIGHWAY SOUTH):

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

PARCEL C:

LOTS 1 THROUGH 6 INCLUSIVE, CHERRY LANE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 48 OF PLATS, PAGE 21, IN KING COUNTY, WASHINGTON:

PARCEL D:

THE SOUTH 245 FEET OF THE WEST 505 FEET OF THE EAST 1031 FEET OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 4 EAST W.M., LYING EASTERLY OF THE STATE HIGHWAY NO. 1:

EXCEPT THE SOUTH 20 FEET THEREOF CONVEYED TO KING COUNTY FOR ROAD BY INSTRUMENT RECORDED UNDER RECORDING NO. 1158645:

AND EXCEPT THAT PORTION OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 4 EAST W.M., LYING SOUTHWESTERLY OF THE ARC OF A CIRCLE HAVING A RADIUS OF 12.5 FEET WHICH IS TANGENT TO THE NORTH RIGHT OF WAY LINE OF SOUTH 144TH STREET AND THE EAST RIGHT OF WAY LINE OF PACIFIC HIGHWAY SOUTH, CONVEYED TO KING COUNTY BY DEED RECORDED UNDER RECORDING NO. 7409040396:

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

PARCEL E:

LOT A OF SHORT PLAT NO. 90-9-SS, RECORDED UNDER RECORDING NO. 9010240314, BEING A PORTION OF LOT 7, CHERRY LANE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 48 OF PLATS, PAGE 21, IN KING COUNTY, WASHINGTON:

PARCEL F:

LOT B OF SHORT PLAT NO. 90-9-SS, RECORDED UNDER RECORDING NO. 9010240314, BEING A PORTION OF LOT 7, CHERRY LANE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 48 OF PLATS, PAGE 21, IN KING COUNTY, WASHINGTON:

Exhibit A-1
Legal Descriptions of the Property
(continued)

PARCEL G:

THE NORTH 220 FEET OF LOT 7, CHERRY LANE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 48 OF PLATS, PAGE 21, IN KING COUNTY, WASHINGTON;

EXCEPT THE NORTH 132 FEET THEREOF;

PARCEL H:

LOT 7, CHERRY LANE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 48 OF PLATS, PAGE 21, IN KING COUNTY, WASHINGTON;

EXCEPT THE NORTH 220 FEET THEREOF;

AND EXCEPT THE SOUTH 84 FEET THEREOF;

PARCEL I:

THE SOUTH 84 FEET OF LOT 7, CHERRY LANE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 48 OF PLATS, PAGE 21, IN KING COUNTY, WASHINGTON;

PARCEL K:

THAT PORTION OF THE NORTH 105.12 FEET OF LOT 13 LYING EASTERLY OF STATE ROAD NO 1 IN BLOCK 2 OF ADAMS HOME TRACTS, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 31, RECORDS OF KING COUNTY,

EXCEPT THOSE PORTIONS OF LOT 13 CONVEYED FOR ROAD PURPOSES TO KING COUNTY, STATE OF WASHINGTON, RECORDED UNDER RECORDING NO 7501150141 AND TO THE STATE OF WASHINGTON RECORDED UNDER RECORDING NO 9603260430, RECORDS OF KING COUNTY,

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

Exhibit A-1
Legal Descriptions of the Property
(continued)

PARCEL L:

THE WEST 60 FEET OF THE NORTH 83 FEET OF LOT 14 IN BLOCK 2 OF ADAMS HOME TRACTS, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 31, RECORDS OF KING COUNTY,

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

PARCEL M:

THAT PORTION OF LOTS 13 AND 14 IN BLOCK 2 OF ADAM HOME TRACTS, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 31, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 60 FEET EAST AND 159 FEET NORTH OF THE SOUTHWEST CORNER OF TRACT 14:

THENCE WESTERLY 100 FEET;

THENCE NORTHERLY 26 FEET;

THENCE WESTERLY 78.51 FEET TO THE EASTERLY MARGIN OF PACIFIC HIGHWAY SOUTH;

THENCE NORTHEASTERLY ALONG SAID HIGHWAY 23.74 FEET;

THENCE EASTERLY 109.85 FEET;

THENCE NORTHERLY 22.20 FEET;

THENCE EASTERLY 60 FEET;

THENCE SOUTHERLY 70.60 FEET TO POINT OF BEGINNING;

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

PARCEL N:

THAT PORTION OF LOTS 12, 13 AND 14 IN BLOCK 2 OF ADAMS HOME TRACTS, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS PAGE 31, DESCRIBED AS FOLLOWS:

BEGINNING 60 FEET EAST AND 125 FEET NORTH OF THE SOUTHWEST CORNER OF TRACT 14;

THENCE WESTERLY 198.14 FEET TO THE EASTERLY MARGIN OF PACIFIC HIGHWAY SOUTH;

THENCE NORTHEASTERLY ALONG SAID HIGHWAY 63.02 FEET;

THENCE EASTERLY 78.51 FEET;

THENCE SOUTHERLY 26 FEET;

THENCE EASTERLY 100 FEET;

THENCE SOUTHERLY 34 FEET TO POINT OF BEGINNING.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

Exhibit A-1
Legal Descriptions of the Property
(continued)

PARCEL O:

LOT 14 IN BLOCK 2 OF ADAMS HOME TRACTS, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 31, RECORDS OF KING COUNTY;

EXCEPT THE WEST 60 FEET THEREOF.

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

PARCEL P:

THE WEST 28.6 FEET OF LOT 15 IN BLOCK 2 OF ADAMS HOME TRACTS, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 31, RECORDS OF KING COUNTY;

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

PARCEL Q:

LOT 15, BLOCK 2, ADAMS HOME TRACTS, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE 31, IN KING COUNTY,

EXCEPT THE WEST 29.5 FEET THEREOF;

AND EXCEPT THE SOUTH 11.5 FEET THEREOF;

AND EXCEPT THE EAST 3.0 FEET THEREOF.

Exhibit B
Depiction of the Property

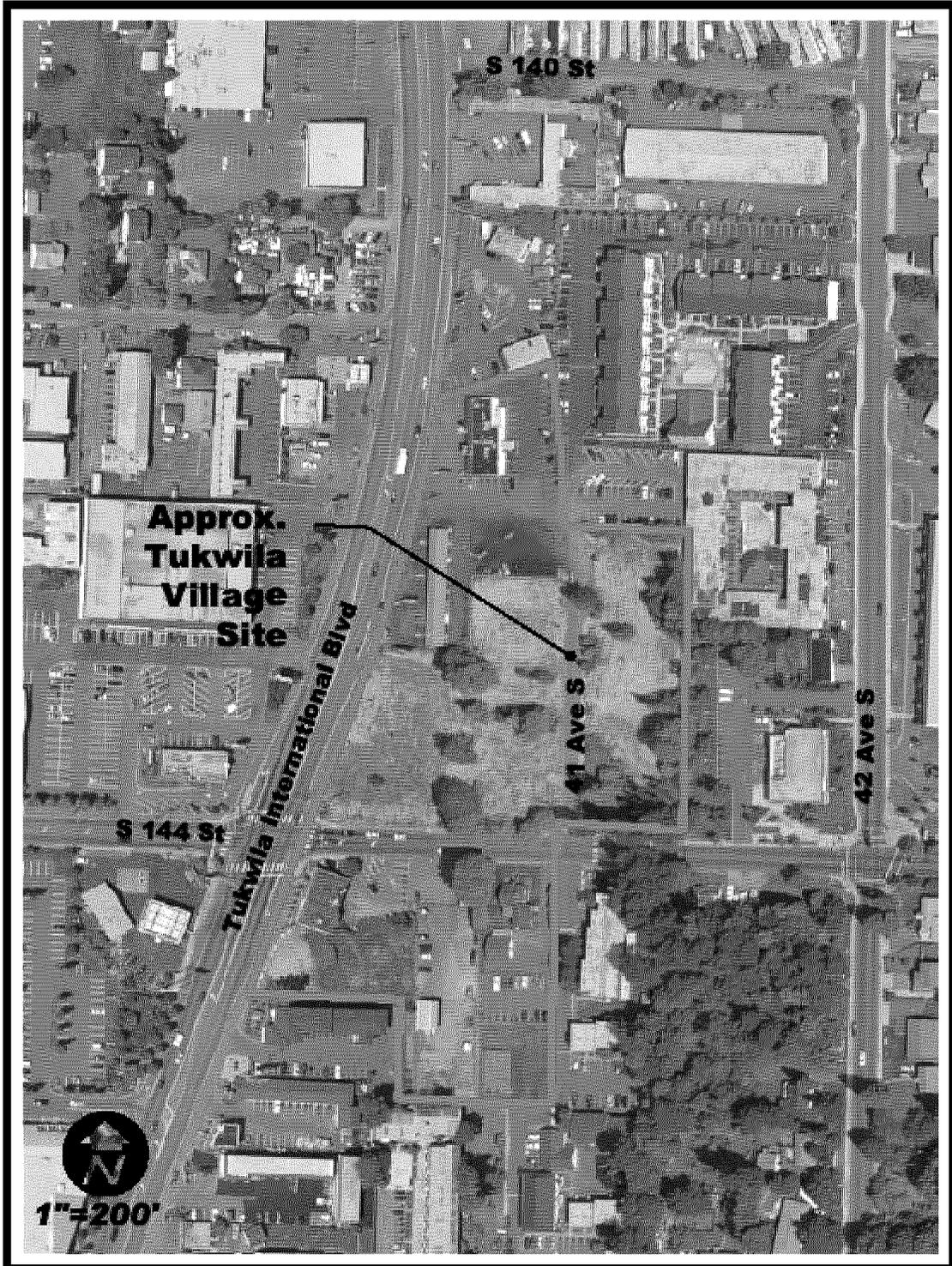


Exhibit C

Form of Statutory Warranty Deed

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Tukwila
6200 Southcenter Boulevard
Tukwila, WA 98188

STATUTORY WARRANTY DEED

GRANTOR, City of Tukwila, a municipal corporation operating under the laws of the state of Washington as a non-charter code city, for and in consideration of _____ (\$_____.__) in hand paid, conveys and warrants to GRANTEE Tukwila Village Development Associates, LLC, a Washington limited liability company, the following described real estate, situated in the County of King, state of Washington:

See Exhibit "A" (Legal Description) attached hereto and incorporated herein by this reference.

1. The Property is conveyed subject to the Permitted Exceptions set forth on Exhibit "B" attached hereto and incorporated herein by this reference, the Disposition and Development Agreement (the "DDA") entered into by and between Grantor and Grantee dated as of the ____ day of _____, 20____, that certain Development Agreement (the "Development Agreement") approved by the Tukwila City Council pursuant to Ordinance No. _____, and the Conditions, Covenants and Restrictions recorded contemporaneously herewith.

2. The Grantor shall have the right, at its option, to reenter and take possession of the Property, with all improvements thereon, and revert in the Grantor the estate conveyed to the Grantee with respect to the Property, if the DDA is terminated pursuant to Section 9.4 of the DDA prior to the time Grantee is entitled to issuance of an Estoppel Certificates of Completion. Such right to reenter, repossess and revert shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

a. Any mortgage, deed of trust or other security instrument permitted by the DDA;

b. Any rights or interest provided in the DDA for the protection of the holder of such mortgages, deeds of trust or other security instruments; or

3. In the event there is a conflict between the provisions of this Statutory Warranty Deed and the DDA, it is the intent of the Parties hereto and their successors in interest that the DDA shall control.

IN WITNESS WHEREOF, the Grantor has executed this Statutory Warranty Deed effective on this ____ day of _____, 20__.

GRANTOR:

City of Tukwila, a municipal corporation

By: _____

Its: _____

STATE OF WASHINGTON)
)ss
COUNTY OF _____)

On _____, 20__ , before me, the undersigned, a Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

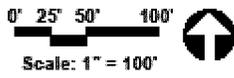
Exhibit D

Phased Development Plan approved pursuant to Section 2.4

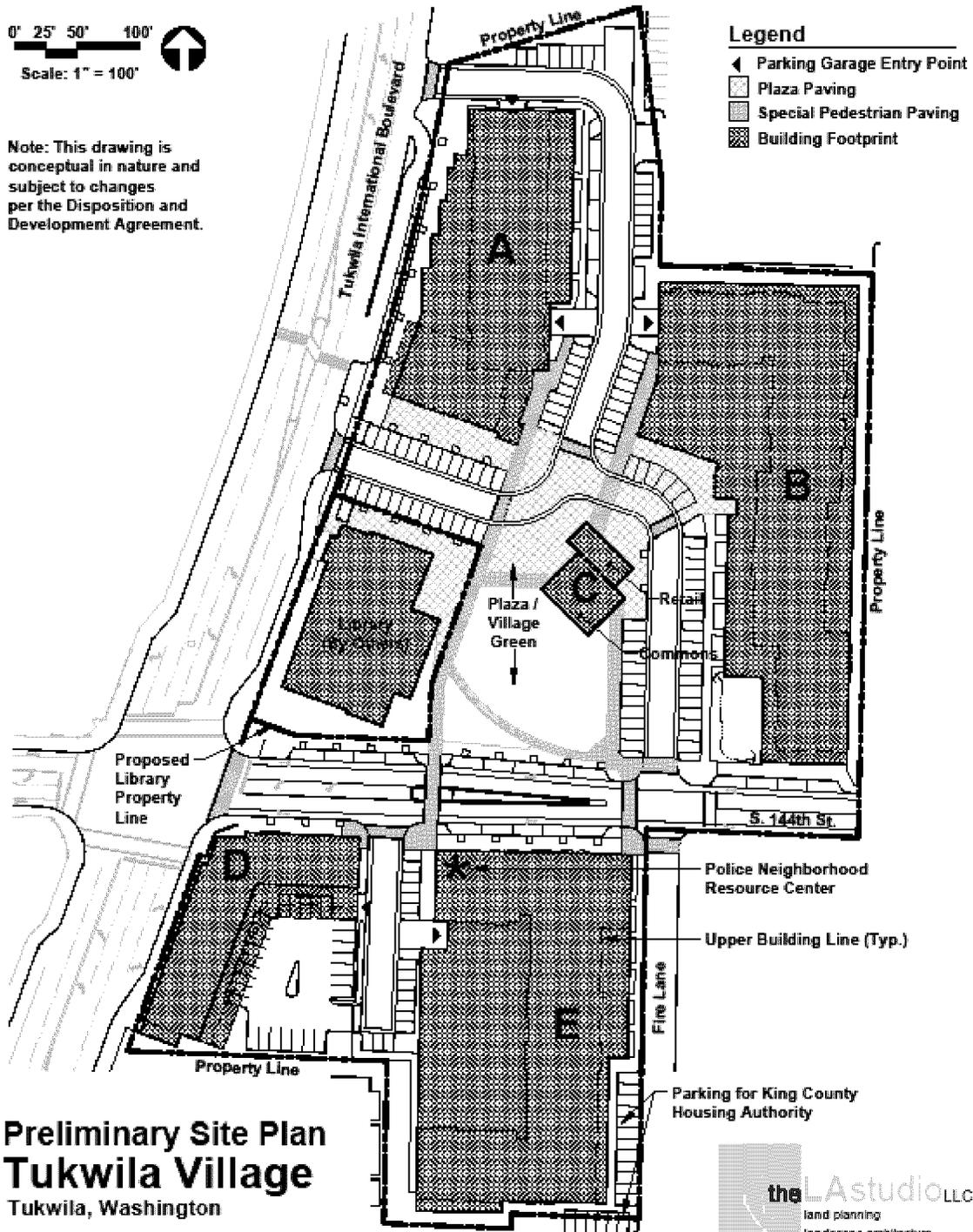
(to be inserted)

Exhibit E
Street Vacation Agreement
(to be inserted)

Exhibit F
Preliminary Site Plan



Note: This drawing is conceptual in nature and subject to changes per the Disposition and Development Agreement.



Preliminary Site Plan
Tukwila Village
Tukwila, Washington

October 18, 2012



Exhibit F-1
Approved Site Plan
(to be inserted)

Exhibit G

Approved Development Agreement in conformance with Section 2.7 of this Agreement

(to be inserted)

Exhibit H
CC&Rs approved pursuant to Section 2.8(E)
(to be inserted)

Exhibit I

Temporary Construction Easement approved pursuant to Section 2.10

(to be inserted)

Exhibit J

Construction Contract(s) approved pursuant to Section 2.14(A)

(to be inserted)

Exhibit K

Financing Plan approved pursuant to Section 2.15

(to be inserted)

Exhibit L
KCLS Development Agreement
(to be inserted)

Exhibit M
Police Resource Center Agreement
(to be inserted)

Exhibit N
Statement of Purpose and Design for the Outdoor Plaza
(to be inserted)

Exhibit O
Statement of Purpose and Design for the Commons
(to be inserted)

Exhibit P
Performance and Payment Guarantee
(to be inserted)

Exhibit Q
Residual Land Value Analysis
(to be inserted)

Exhibit R
Form of DDA Memorandum
(to be inserted)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Tukwila
6200 Southcenter Blvd.
Tukwila, WA 98188
Attn: XX

(Space Above This Line For Recorder's Use)

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (the "Memorandum") is made as of _____, 200__, by and between the City of Tukwila, a municipal corporation operating under the laws of the state of Washington as a non-charter code city (the "**C**ity"), and Tukwila Village Development Associates, LLC, a Washington limited liability company (the "Developer"). This Memorandum confirms that the City and Developer entered into that certain Disposition and Development Agreement, dated as of *** (the "DDA"). The DDA sets forth certain rights and obligations of the City and Developer with respect to conveyance, development, operation, maintenance and transfer of ownership interests in that certain real property in Tukwila, WA, described in the attached Attachment No. 1. Such rights and obligations as set forth in the DDA constitute covenants running with the land and are binding upon the City, Developer, and their respective permitted successors in interest under the DDA until such time as an Estoppel Certificate of Completion is issued by the City pursuant to the DDA; provided that, certain covenants set forth in the DDA shall survive issuance of the Estoppel Certificate of Completion.

This Memorandum is prepared for the purpose of recordation, and it in no way modifies the provisions of the DDA. A complete copy of the DDA is on file with the Office of the Tukwila City Clerk and was approved pursuant to Resolution No. *** of the Tukwila City Council.

CITY

CITY OF TUKWILA, a municipal corporation

By: _____

Its: _____

TUKWILA VILLAGE DEVELOPMENT
ASSOCIATES, LLC

By: _____

Its: _____

Exhibit S
Legal Description of Benefited Property
(to be inserted)

Exhibit T
Parking Easement
(to be inserted)

Exhibit U

Legal Description of 41st Avenue to be vacated

(to be inserted)

ATTACHMENT NO. 1 TO MEMORANDUM OF DDA

Legal Description of the Property

PARCEL A:

THAT PORTION OF LOT 9 IN BLOCK 3 OF JAMES CLARK'S GARDEN ADDITION TO THE CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 13 OF PLATS, PAGE 12, RECORDS OF KING COUNTY AUDITOR; AND OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 4 EAST W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTH 812.6 FEET OF THE EAST 425.5 FEET OF SAID SOUTHEAST 1/4;
THENCE SOUTH 01°27'30" WEST 200 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;
THENCE SOUTHWESTERLY TO A POINT ON THE EASTERLY LINE OF PACIFIC HIGHWAY SOUTH (STATE ROAD NO. 1), DISTANT SOUTHERLY 250.50 FEET (AS MEASURED ALONG SAID EASTERLY LINE) FROM THE INTERSECTION OF SAID EASTERLY LINE WITH THE NORTH LINE OF THE SOUTH 812.6 FEET OF SAID SOUTHEAST 1/4;
THENCE SOUTHERLY ALONG SAID EASTERLY HIGHWAY LINE TO THE SOUTH LINE OF SAID LOT 9;
THENCE EASTERLY ALONG SAID SOUTH LINE TO THE SOUTHEAST CORNER THEREOF;
THENCE SOUTHERLY TO A POINT ON THE NORTHERLY LINE OF A TRACT CONVEYED TO ZIBA HUNTINGTON BY DEED RECORDED UNDER KING COUNTY RECORDING NO. 412377;
THENCE EASTERLY ALONG SAID NORTH LINE TO A POINT WHICH BEARS SOUTH 01°27'30" WEST FROM THE TRUE POINT OF BEGINNING;
THENCE CONTINUING EAST TO A POINT 405.04 FEET WEST FROM THE EAST LINE OF SAID SOUTHEAST 1/4 OF SOUTH SOUTHWEST 1/4;
THENCE NORTH PARALLEL WITH SAID EAST LINE 65 FEET;
THENCE NORTHWESTERLY TO THE TRUE POINT OF BEGINNING.

PARCEL A-1:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER A STRIP OF LAND 20 FEET IN WIDTH THE SOUTHERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF THE NORTH 398.1 FEET OF THE EAST 525.5 FEET OF THE SOUTH 812.6 FEET OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 4 EAST W.M., 100 FEET DISTANT EAST OF THE NORTHWEST CORNER OF SAID SUBDIVISION;
THENCE SOUTH 01°27'30" WEST 200 FEET TO THE TRUE POINT OF BEGINNING OF THE SOUTHERLY LINE OF THE EASEMENT HEREIN DESCRIBED;
THENCE SOUTHWESTERLY TO A POINT ON THE EASTERLY MARGIN OF PACIFIC HIGHWAY SOUTH (STATE ROAD NO. 1) WHICH POINT IS 250.50 FEET SOUTHERLY AS MEASURED ALONG SAID HIGHWAY FROM A POINT IN THE EAST MARGIN OF SAID HIGHWAY DISTANT 23.40 FEET, MORE OR LESS, WEST OF THE WEST LINE OF THE SUBDIVISION HEREIN DESCRIBED AND ON THE NORTH LINE THEREOF AS THE SAME IS PRODUCED WESTERLY;

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

ATTACHMENT NO. 1 TO MEMORANDUM OF DDA

Legal Description of the Property

(continued)

PARCEL B:

THE NORTH 185.90 FEET OF THE SOUTH 430.9 FEET OF THE WEST 505 FEET OF THE EAST 1,031 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 4 EAST, W.M., LYING EASTERLY OF WASHINGTON STATE HIGHWAY NO. 1 (PACIFIC HIGHWAY SOUTH);

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

PARCEL C:

LOTS 1 THROUGH 6 INCLUSIVE, CHERRY LANE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 48 OF PLATS, PAGE 21, IN KING COUNTY, WASHINGTON;

PARCEL D:

THE SOUTH 245 FEET OF THE WEST 505 FEET OF THE EAST 1031 FEET OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 4 EAST W.M., LYING EASTERLY OF THE STATE HIGHWAY NO. 1;

EXCEPT THE SOUTH 20 FEET THEREOF CONVEYED TO KING COUNTY FOR ROAD BY INSTRUMENT RECORDED UNDER RECORDING NO. 1158645;

AND EXCEPT THAT PORTION OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 23 NORTH, RANGE 4 EAST W.M., LYING SOUTHWESTERLY OF THE ARC OF A CIRCLE HAVING A RADIUS OF 12.5 FEET WHICH IS TANGENT TO THE NORTH RIGHT OF WAY LINE OF SOUTH 144TH STREET AND THE EAST RIGHT OF WAY LINE OF PACIFIC HIGHWAY SOUTH, CONVEYED TO KING COUNTY BY DEED RECORDED UNDER RECORDING NO. 7409040396;

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

PARCEL E:

LOT A OF SHORT PLAT NO. 90-9-SS, RECORDED UNDER RECORDING NO. 9010240314, BEING A PORTION OF LOT 7, CHERRY LANE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 48 OF PLATS, PAGE 21, IN KING COUNTY, WASHINGTON;

PARCEL F:

LOT B OF SHORT PLAT NO. 90-9-SS, RECORDED UNDER RECORDING NO. 9010240314, BEING A PORTION OF LOT 7, CHERRY LANE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 48 OF PLATS, PAGE 21, IN KING COUNTY, WASHINGTON;

ATTACHMENT NO. 1 TO MEMORANDUM OF DDA

Legal Description of the Property

(continued)

PARCEL G:

THE NORTH 220 FEET OF LOT 7, CHERRY LANE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 48 OF PLATS, PAGE 21, IN KING COUNTY, WASHINGTON;

EXCEPT THE NORTH 132 FEET THEREOF;

PARCEL H:

LOT 7, CHERRY LANE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 48 OF PLATS, PAGE 21, IN KING COUNTY, WASHINGTON;

EXCEPT THE NORTH 220 FEET THEREOF;

AND EXCEPT THE SOUTH 84 FEET THEREOF;

PARCEL I:

THE SOUTH 84 FEET OF LOT 7, CHERRY LANE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 48 OF PLATS, PAGE 21, IN KING COUNTY, WASHINGTON;

PARCEL K:

THAT PORTION OF THE NORTH 105.12 FEET OF LOT 13 LYING EASTERLY OF STATE ROAD NO 1 IN BLOCK 2 OF ADAMS HOME TRACTS, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 31, RECORDS OF KING COUNTY,

EXCEPT THOSE PORTIONS OF LOT 13 CONVEYED FOR ROAD PURPOSES TO KING COUNTY, STATE OF WASHINGTON, RECORDED UNDER RECORDING NO 7501150141 AND TO THE STATE OF WASHINGTON RECORDED UNDER RECORDING NO 9603260430, RECORDS OF KING COUNTY,

SITUATE IN THE CITY OF TUKWILA, COUNTY OF KING, STATE OF WASHINGTON,

PARCEL L:

THE WEST 60 FEET OF THE NORTH 83 FEET OF LOT 14 IN BLOCK 2 OF ADAMS HOME TRACTS, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 31, RECORDS OF KING COUNTY,

SITUATE IN THE CITY OF TUKWILA, COUNTY OF KING, STATE OF WASHINGTON,

ATTACHMENT NO. 1 TO MEMORANDUM OF DDA

Legal Description of the Property

(continued)

PARCEL M:

THAT PORTION OF LOTS 13 AND 14 IN BLOCK 2 OF ADAM HOME TRACTS, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 31, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 60 FEET EAST AND 159 FEET NORTH OF THE SOUTHWEST CORNER OF TRACT 14;

THENCE WESTERLY 100 FEET;

THENCE NORTHERLY 26 FEET;

THENCE WESTERLY 78.51 FEET TO THE EASTERLY MARGIN OF PACIFIC HIGHWAY SOUTH;

THENCE NORTHEASTERLY ALONG SAID HIGHWAY 23.74 FEET;

THENCE EASTERLY 109.85 FEET;

THENCE NORTHERLY 22.20 FEET;

THENCE EASTERLY 60 FEET;

THENCE SOUTHERLY 70.60 FEET TO POINT OF BEGINNING;

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

PARCEL N:

THAT PORTION OF LOTS 12, 13 AND 14 IN BLOCK 2 OF ADAMS HOME TRACTS, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS PAGE 31, DESCRIBED AS FOLLOWS:

BEGINNING 60 FEET EAST AND 125 FEET NORTH OF THE SOUTHWEST CORNER OF TRACT 14;

THENCE WESTERLY 198.14 FEET TO THE EASTERLY MARGIN OF PACIFIC HIGHWAY SOUTH;

THENCE NORTHEASTERLY ALONG SAID HIGHWAY 63.02 FEET;

THENCE EASTERLY 78.51 FEET;

THENCE SOUTHERLY 26 FEET;

THENCE EASTERLY 100 FEET;

THENCE SOUTHERLY 34 FEET TO POINT OF BEGINNING.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

PARCEL O:

LOT 14 IN BLOCK 2 OF ADAMS HOME TRACTS, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 31, RECORDS OF KING COUNTY;

EXCEPT THE WEST 60 FEET THEREOF.

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

ATTACHMENT NO. 1 TO MEMORANDUM OF DDA

Legal Description of the Property

(continued)

PARCEL P:

THE WEST 28.6 FEET OF LOT 15 IN BLOCK 2 OF ADAMS HOME TRACTS. AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 31, RECORDS OF KING COUNTY;

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

PARCEL Q:

LOT 15, BLOCK 2, ADAMS HOME TRACTS, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE 31, IN KING COUNTY,

EXCEPT THE WEST 29.5 FEET THEREOF;

AND EXCEPT THE SOUTH 11.5 FEET THEREOF;

AND EXCEPT THE EAST 3.0 FEET THEREOF.