

RESOLUTION NO. 581

A RESOLUTION OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, RESOLUTION APPROVING THE ATTACHED AMENDED AND RESTATED NEW LIBRARY DEVELOPMENT AGREEMENT BETWEEN THE PIERCE COUNTY RURAL LIBRARY DISTRICT AND THE CITY OF UNIVERSITY PLACE AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT SUBSTANTIALLY IN THE FORM ATTACHED AND ALL OTHER DOCUMENTS NECESSARY TO ACCOMPLISH THE PURPOSE CONTAINED THEREIN

WHEREAS, the City of University Place ("City") has been planning for many years a visually attractive and pedestrian oriented mixed-use town center that will serve as the civic and retail focal point of the community; and

WHEREAS, the City sought to develop a intermodal transit center with public parking on the site occupied by the Library; and

WHEREAS, in July 2006, the Pierce County Rural Library District ("District") agreed to transfer its existing property to the City and concurrently the City agreed to pay all costs of temporary relocation and construction of a new library that was a part of the town center project; and

WHEREAS, since that time, the City and the District have discussed several locations and site plans for a new Library that more loosely align with the vision of the town center project and have reached agreement and have begun planning for a mixed use building on the Lot 9 transit center; and

WHEREAS, the City and the District desire to amend the existing New Library Development Agreement and proceed under the terms of an Amended and Restated New Library Development Agreement; and

WHEREAS, the District approved the attached agreement at its April meeting; NOW, THEREFORE,

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

Section 1. Library Agreement Approval. The City Council hereby approves of the Amended and Restated New Library Development Agreement attached hereto as Exhibit A and incorporated by this reference between the Pierce County Rural Library District and the City of University Place for the development of a new library as a part of a mixed use civic building located over the transit center constructed on Lot 9 of the University Place Town Center Binding Site Plan.

Section 2. City Manager Authorization. The City Council hereby authorizes the City Manager to execute Amended and Restated New Library Development Agreement, substantially in the form attached hereto and to enter into the attached agreement on behalf of the City. In addition, the Council authorizes the City Manager to execute such other documents and to take such other actions as may be necessary to make this Agreement effective.

Section 3. Effective Date. This resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL ON MAY 5, 2008.



Linda Bird, Mayor

ATTEST:



Emelita Genetia, City Clerk

EXHIBIT A

AMENDED AND RESTATED NEW LIBRARY DEVELOPMENT AGREEMENT

between

PIERCE COUNTY RURAL LIBRARY DISTRICT,
a Washington rural library district

(The Library District)

and

CITY OF UNIVERSITY PLACE,
a Washington municipal corporation

(City)

_____, 2008

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Schedule 1 Definitions

Exhibits:

Exhibit A	Property Description
Exhibit B	Library Expansion Space Area
Exhibit C	Promissory Note
Exhibit D	City Mortgage (Deed of Trust)
Exhibit E	Library Preliminary Site Plan
Exhibit F	Koppe/Wagner Memorandum dated May 30, 2006
Exhibit G	Approved Schematic Plans

AMENDED AND RESTATED NEW LIBRARY DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED NEW LIBRARY DEVELOPMENT AGREEMENT (this "Agreement") is dated as of _____, 2008, and is by and between the Pierce County Rural Library District, a Washington rural library district (the "Library District") and the City of University Place, a Washington municipal corporation and a code city ("City").

RECITALS:

A. The Library District was the owner of the University Place branch library building (the "Library Building"), previously located at 3605 Bridgeport Way, University Place, Pierce County, Washington (the "Library Property") and operated a public library thereon (the "Library").

B. City is a municipal corporation that intends to develop a downtown transit center with public parking (the "Transit Center") located on Lot 9 of the University Place Town Center Binding Site Plan, Auditor's Recording No. 200702015003 (which site plan is referred to herein as either the "University Place Town Center" or the "Binding Site Plan"). The Library Building was located on a site to be redeveloped as the Transit Center.

C. At closing of the transfer of the Library Property to City, City executed and delivered to the Library District, the City Note and the City Deed of Trust (as defined in the Property Transfer Agreement between the City and the Library District dated July 19, 2006 (the "Property Transfer Agreement")). The City Deed of Trust is and will be a first lien on the Liened Property as defined in the Property Transfer Agreement. Contemporaneously therewith, the City and the Library District entered into a New Library Development Agreement dated July 19, 2006. This Amended and Restated New Library Development Agreement amends and restates the New Library Development Agreement in its entirety in light of changes that have occurred since the original agreement was executed.

D. City agrees to build a mixed use condominium building (the "Mixed Use Building") above the Transit Center on Lot 9 of the Binding Site Plan in which the New Library will be located. The elevator and book drop area to the south is currently planned within the proposed garage on Lot 10. The City agrees that these library facilities on Lot 10 will be substantially completed concurrent with the substantial completion of the New Library. Any reference in this Agreement to the "New Library" or "Library Unit" shall mean a ground floor commercial condominium unit constructed as part of the Mixed Use Building as more particularly described below. Unless the context indicates otherwise, any reference in this Agreement to the New Library includes the rights in the Library Parking (as defined in Article VI of this Agreement) and the library facilities on Lot 10.

E. In order to accommodate City's schedule for redevelopment of the Library Property as part of the Transit Center, the City has entered into two leases (collectively, the "Lease") of the Temporary Facilities (as hereinafter defined) and has agreed to sublease the Temporary Facilities to the Library District. The Library District has agreed to relocate the Library to the Temporary Facilities (which will provide for temporary relocation of the Library

while the New Library is being constructed). The Lease of the Temporary Facilities had an original termination date of May 31, 2008 but the City has the right to extend the term of the Lease (and the Library District has a corresponding right to extend the term of the sublease) for four (4) additional extension terms of six (6) months each or until May 31, 2010. The City has exercised the first two options, extending the Lease to May 31, 2009, and will exercise its rights thereunder until the New Library is substantially complete and the Library District has had an opportunity to move into the New Library as set forth herein.

F. City has agreed to cause the design, development and construction of the New Library, in a timely manner so as to cause Substantial Completion of the New Library on or before January 1, 2010 on the terms and conditions hereinafter set forth.

G. The City will construct the New Library in the Mixed Use Building. The City may either cause Lot 9 to be redeveloped with a two unit commercial condominium consisting of the Transit Center and the Mixed Use Building and may then create another condominium consisting of different units within the Mixed Use Building or the City may create one commercial condominium consisting of a number of commercial units for use as the New Library, government offices, other commercial uses, retail uses and parking. No condominium units will be used for residential purposes. The Mixed Use Building in which the Library Unit will be located may contain several floors. The area below the Library Unit will be the Transit Center. The Transit Center will have three floors of parking; the lower two floors will be open to public parking and the third level will contain 80 parking stalls owned by the Library but open to the public as described in Article VI. The Library Unit will be on the first floor of the Mixed Use Building. The floor area above the Library Unit will be space for the City's municipal offices or other commercial office space (the "Upper Level Unit"). There may be other condominium units on the first floor of the Mixed Use Building reserved for commercial retail uses. The documents forming the condominium(s) will be subject to the review and approval of the Library District as hereinafter provided. The New Library is to be completed and ready for operation as a library (except for books, computers, tables and other movable items of personal property) with improvements of comparable quality to those of new, comparably-sized, Pierce County library branches (but not less than that of the facility that previously existed on the Library Property), all in accordance with the plans and specifications to be approved pursuant to this Agreement.

H. The City will pay the Library District's reasonable costs incurred for outside consultants (including architects and reasonable legal expenses) associated with drafting and reviewing documents, consultations and the negotiations and implementation of this Agreement. The City will also pay all other reasonable costs (exclusive of staff personnel costs) incurred by the Library District in relocating the Library to the New Library.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Library District and City agree as follows:

ARTICLE I
SIZE AND CONFIGURATION OF MIXED USE BUILDING

1.1 Attached hereto as Exhibit A is a drawing showing the general size, configuration and location of the property upon which the Transit Center and Mixed Use Building will be constructed.

1.2 The City has obtained a binding site plan and shall record a condominium declaration on Lot 9 upon substantial completion of the building shell and core for the Mixed Use Building creating a number of condominium units which will include, at a minimum, the Transit Center and the Mixed Use Building and additional condominium units within the Mixed Use Building that can be separately sold or leased by the City.

ARTICLE II
AGREEMENT TO ACQUIRE NEW LIBRARY

2.1 Description of New Library. The City agrees to build and/or acquire and the Library District agrees to accept title to the New Library (including the Library Parking) upon substantial completion thereof.

2.2 Payment of Purchase Price for New Library. If the City constructs, or causes the construction of, the New Library in accordance with the requirements of this Agreement, the Library District will accept title to the New Library in full and complete payment and satisfaction of the City Note and will execute a request for full reconveyance of the City Deed of Trust as a condition to Closing.

2.3 Library Expansion Space. In addition to providing the New Library, the City will also cause a "Library Expansion Space" to be constructed. The Library Expansion Space will be a shell and core only and will be located in the area depicted on the Preliminary Plans attached as Exhibit B hereto. The Library Expansion Space will consist of 5,000 square feet subject to the adjustments set forth in Section 6.3.1 herein.

2.4 Purchase of Library Expansion Space. The City agrees to sell, and the Library District agrees to purchase, the Library Expansion Space for a purchase price equal to the Expansion Costs (as defined herein), limited in any case to an amount where the payments over ten years (including interest) are no less than \$1 million but no greater than \$1.2 million ("Purchase Price"). Irrespective of the costs the City incurs for the Library Expansion Space, the Library District shall pay the City \$100,000 per year for ten years for the Library Expansion Space. If the City documents that it has incurred costs in excess of \$1 million for constructing the shell and core improvements in the Library Expansion Space, then the Library will increase its payments to reflect payment of those additional costs over a ten-year period; however, the maximum payable by the Library District will be \$120,000 per year for ten years, regardless of the City's actual costs for providing the Library Expansion Space. For purposes of this Agreement, the "Expansion Costs" means costs incurred by the City in constructing the Library Expansion Space that is in addition to the cost of constructing the New Library and the Mixed Use Building without the Library Expansion Space, determined by the sum of (a) the total amount paid to the contractor retained by the City to construct the Library Expansion Space

under its construction contract for the New Library and (b) the soft costs associated with the construction of the Library Expansion Space. The City will initially determine the additional construction costs by obtaining an alternate bid by the City's contractor, which alternate bid will set forth the additional cost for building the core and shell of the Library Expansion Space. Construction costs shall include the cost of foundation, exterior skin and roof enclosures, utility infrastructure, mechanical and electrical systems servicing the Library Expansion Space and similar ancillary systems and improvements that serve the Library Expansion Space. Soft costs shall include, but not be limited to, architectural and engineering fees paid to third parties not employed by the City, miscellaneous consultants, testing and inspection, land-use, permit and entitlement fees, utility extension costs and fees, insurance, closing costs and Washington state sales tax, but shall not include any development fees payable to the City if the City builds the Library Expansion Space, the legal fees of the City's attorneys in negotiating this Agreement, the cost to construct the Transit Center or the cost of the land. The City will document the additional costs incurred in building the shell and core of the Library Expansion Space. The City will not be responsible for any costs of any library interior improvements to the Library Expansion Space, but, if the City exercises its lease rights under Section 2.6, it will be responsible for costs of any interior improvements associated with the City's lease of the Library Expansion Space.

2.5 Payment of Purchase Price for Transfer of Title of Library Expansion Space. The Purchase Price for the Library Expansion Space will be paid upon Substantial Completion of the Mixed Use Building by execution and delivery of a promissory note in the face amount of the Library Expansion Space Purchase Price executed by the Library District in favor of City (the "Note"). The Purchase Price will be payable in equal monthly installments in an amount sufficient to fully amortize the Purchase Price over a term of ten (10) years, which shall be the maturity date; to the extent that the Library Expansion Space Purchase Price is less than \$1 million, the interest rate will be such that, when the Purchase Price is amortized over ten (10) years, the annual payments are \$100,000; if the Purchase Price exceeds \$1 million, then no interest will accrue; in any case, the total Purchase Price will not exceed \$1,200,000 and will be payable in amounts no greater than \$120,000 a year. The Note will provide that the Library District may prepay the Note in whole or in part at any time without premium or penalty, which payments will be applied in the inverse order of amortization; provided however, the amount being pre-paid must include principal and interest that would have been payable on that principal if the Note had not been pre-paid. The Note will be secured by a first lien deed of trust on the Library Expansion Space executed by the Library as grantor in favor of the City as beneficiary (the "City Mortgage"). The Note and the City Mortgage shall be in substantially the forms attached hereto as Exhibits C and D.

2.6 City Lease of Library Expansion Space. The Library District agrees that the City shall have the right to lease the Library Expansion Space from the Library District upon transfer of Title from the City to the Library District. At a minimum, the terms of the lease shall include a lease rate not to exceed ten dollars (\$10.00) per year (plus all applicable expenses pertaining to the Library Expansion Space) for a term of ten years and the City's right to sublease the Library Expansion Space to a retail or office tenant. The terms of the lease shall be set forth in a lease agreement between the City and the Library District, on commercially reasonable terms. The Lease will contain provisions requiring the City to remove all interior improvements of the Library Expansion Space at the end of its term except to the extent that the Library District elects

to keep such improvements. If the parties are unable to agree on the terms of the lease, the terms shall be determined by an arbitrator pursuant to the Arbitration provisions contained herein.

2.7 Escrow Holder. Land America Commercial Services ("Escrow Holder") has been designated as escrow holder hereunder by mutual agreement of the Library District and City. Escrow Holder shall be responsible for closing the acquisition of the New Library as provided herein.

ARTICLE III PAYMENT OF COSTS

3.1 Payment of Approved Costs The City will pay all approved Library Expenses incurred in connection with the design, development, construction and acquisition of the New Library and the Library Expansion Space in accordance with the procedure set forth below. . As used herein, "Library Expenses" will include all reasonable out of pocket expenses incurred by the Library District with respect to the Library District's inspection, evaluation and implementation of the proposed sale of the Library Property and the purchase and move to the Mixed Use Building, including architects and engineers, and the Library District's reasonable legal fees. The expenses can include an inspecting architect and/or engineer and the out of pocket expenses the Library District incurred in moving its books, equipment and other items from the Library Building to a storage location in University Place and the Temporary Facilities (as hereinafter defined), and then moving them again to the New Library, as well as the storage costs of the books, furniture and equipment that are not stored in an existing facility now owned or leased by the Library District. The costs will include the legal fees and costs the Library District incurs in preparing, reviewing, discussing, negotiating and revising this Agreement, the Condominium Declaration and the Condominium Documents, if applicable, and other documents pertaining to this Agreement or the implementation of this Agreement. The costs also include any other items expressly stated as being a Library Expense herein. The Library Expenses will also include the overtime and additional employee expenses incurred in connection with moving the Library when less than four (4) months' notice has been given for such move. The expenses that are reimbursable pursuant to this Section will be referred to in this Agreement as the "Library Expenses."

3.2 Payment of Library Expenses. Within thirty (30) days after the Library District submits an invoice for Library Expenses to the City for payment, the City will either pay the Library District the amount of the invoice or will notify the Library District of the reason for its refusal to pay the invoice as submitted. The City will approve all reasonable Library Expenses. If the City only rejects a portion of the invoice, the City will promptly pay the approved portion of the invoice. For any invoice that has been rejected in whole or in part, the parties agree to meet and discuss the reasons for rejection. If the parties are unable to agree on the amount to be paid within thirty (30) days after notice of rejection, then either party may have the dispute resolved pursuant to the Arbitration provisions set forth in Article XIII of this Agreement. The Library District will also be reimbursed for that portion of the invoice approved by the Arbitrator that has not previously been reimbursed.

ARTICLE IV

TITLE TO NEW LIBRARY AND LIBRARY EXPANSION SPACE

4.1 Title Insurance. On the New Library Closing, City shall cause Land America Title Company (the "Title Insurer") to insure title to the New Library and the Library Expansion Space in the name of the Library District under an ALTA extended coverage owner's policy of title insurance subject only to the exceptions reasonably acceptable to the Library District, provided that any disapproval by the Library District of any existing or proposed title exception will be limited to grounds that the same will materially and adversely affect the value, use, or enjoyment of the New Library by the Library District. If requested by the Escrow Holder, City will provide an affidavit to the Escrow Holder confirming that no work has been performed on the Mixed Use Building within ninety (90) days prior to the date of the New Library Closing for which a lien could be asserted against the New Library or the Library Expansion Space or, if such work has been performed, then City will provide an indemnity against such lien in form and amount acceptable to the Title Insurer.

4.2 Resolution of Title Disputes. Any dispute by City that Library District's disapproval of any existing or proposed title exception is not consistent with the requirements of this Article IV shall be resolved pursuant to the Arbitration provisions set forth in Article XIII of this Agreement.

4.3 Title to New Library. At the New Library Closing, the City shall convey to the Library District marketable fee simple title to the real property constituting the New Library (including the Library Parking in fee title if such parking consists of a separate condominium unit or as an exclusive easement to the Library Parking if created through such an easement) and the Library Expansion Space together with the limited common elements assigned to the New Library and Library Expansion Space, by execution and delivery of a Warranty Deed to the New Library and Library Expansion Space (and, if a separate unit, the Library Parking) (collectively, the "New Library Deed"). Evidence of delivery of fee simple title shall be the issuance by Title Insurer of an ALTA extended coverage Owner's Policy of Title Insurance (form 1970 with 1984 rev.) with liability in the amount of \$4,100,000.00 for the New Library and \$1,000,000 for the Library Expansion Space insuring fee simple title to the New Library and the Library Expansion Space (and Library Parking, if applicable) in Library District, subject only to such permitted exceptions as the Library District may reasonably approve as set forth in Section 4.1, and together with such endorsements as Library District may reasonably request (the "New Library Title Policy").

ARTICLE V

TEMPORARY FACILITIES

5.1 Lease of Temporary FacilitiesTemporary Facilities. The City has leased the former Napa Auto Parts Store at 27th Street (the “Temporary Facilities”) for operation of the Library pursuant to the terms of the Lease. The Lease is for a term of approximately 24 months with four (4) six-month extensions. The Library District has reviewed and approved the Lease. The City will exercise its options to extend in a timely manner until the Library District’s right to occupy the Temporary Facility terminates as set forth in Subsection 5.1.2.

5.1.2 Terms of Sublease. The City and the Library District have agreed upon a sublease to the Temporary Facilities, on terms and conditions reasonably acceptable to the Library District that are not inconsistent with the terms of the Lease (the “Sublease”). The Sublease is on a triple net basis whereby the Library District will not pay rent on the Temporary Facilities but will pay all operating expenses associated with its operation of the Library in the Temporary Facilities including insurance and all utilities but excluding taxes (the City will pay any applicable real property taxes). The Library District shall have the right to occupy the Temporary Facilities for up to sixty (60) days following closing of the purchase of the New Library by the Library District.

5.2 Renovation. The City has renovated the Temporary Facilities in such a manner as to make it suitable for use as a library by the Library District, all to the reasonable satisfaction of the Library District. The cost of such renovations were a Library Expense and were reimbursed in accordance with Article III.

5.3 Relocation of the Library District’s Personal Property. The City shall be solely responsible for entering into contracts for the temporary storage of the books, unattached furniture and equipment and all other personal property in the Library Building (the “Library District Personal Property”) and the reinstallation of the same in the New Library. The out of pocket costs incurred by the Library District in moving and storing the Library District Personal Property will be a Library Expense and reimbursed by the City in accordance with Article III from the Library Project Account (other than employee overtime expenses). In addition, the Library District shall be reimbursed as a Library Expense for the cost of overtime incurred by existing Library District employees to implement the move from the Temporary Facilities to the New Library if less than four (4) months’ advance notice has been given to the Library to make such move.

ARTICLE VI PLANS AND SPECIFICATIONS

6.1 Preliminary Plans. The Mixed Use Building Preliminary Plans are attached hereto as Exhibit E. The New Library and Mixed Use Building of which the New Library is a part, will be designed in a manner to be consistent with the University Place Town Center Design Standards. In addition, the design must meet the Minimum Requirements and must be developed through the process described in this Article VI.

6.2 It is contemplated that the elevator and bookdrop to the New Library may encroach onto Lot 10 and may be part of construction of Lot 10 development, or the City may amend the boundary lines between Lot 9 and Lot 10 to cause all Library related facilities to be

constructed within Lot 9. In any case, an easement or other permanent right to use such elevator and bookdrop will be established for the Library District's use. Irrespective of construction of other improvements on Lot 10, the City will complete construction of the elevator, book drop and any other Library facilities necessary or contemplated in the Preliminary Plans by the Substantial Completion date. In addition the City will assure that areas necessary to use the elevator, book drop, and any other Library facilities are secure and safe for use by Library District patrons and the public.

6.3 Minimum Requirements. The New Library, Library Expansion Space and Library Parking shall meet the following Minimum Requirements:

6.3.1 External Improvements:

A. The New Library shall consist of at least 15,000 square feet of space located on the ground floor of the Mixed Use Building (which space will exclude the common areas, elevator shafts or mechanical rooms used to service condominium units other than the Library Unit).

B. There must be substantial and unobstructed views of the Mixed Use Building from Bridgeport Way. It is expected that there will be a plaza or other form of open space between the Mixed Use Building and Bridgeport Way so that the Mixed Use Building will be clearly visible from Bridgeport Way.

C. The Mixed Use Building shall be designed so that it is possible for the New Library to be expanded by the Library Expansion Space on the ground floor. The New Library and the Library Expansion Space must have at least 20,000 square feet of space, with the New Library having at least 15,000 square feet and the Library Expansion Space having enough square footage to meet the 20,000 square foot requirement.

D. The Mixed Use Building is to be constructed to meet the University Place Town Center Design Standards and the minimum specifications set forth on the approved schematic plans described in Section 6.5. It must also be designed to minimize sound intrusion and water intrusions from other portions of the property.

E. Ceiling must be at least 17.5 feet high, measured from finished floor to finished floor above.

F. The Transit Center will contain three floors of parking. Eighty (80) parking stalls on the top floor (or, all of the top floor and the balance of the 80 on the second floor) will be owned by the Library District for the exclusive use by the Library District, its employees and patrons, and another twenty (20) parking stalls will be available for use by Library District employees, patrons, and invitees on a non-exclusive basis (which parking rights will be set forth in covenants that run with the Transit Center and the New Library; these parking rights will be collectively referred to herein as the "Library Parking"). Until parking is converted to private use as set forth in the next sentence, the Library Parking shall be open to the general public on the same terms and conditions as other Transit Center parking. In the event the Transit Center is converted to a privately-owned facility, the Library District shall have the right to revoke general public use of the eighty (80) parking stalls which shall thereafter be reserved for

exclusive use by Library District employees, patrons and invitees; the Library District will also retain the right to use at least 20 parking stalls on a non-exclusive basis. So long as the Library Parking is open to the general public, the balance of the parking in the Transit Center will be available for use by patrons, employees and other guests and invitees of the Library District on the same terms as other users of the Transit Center (except to the extent limited on the first and second floors of the Transit Center due to Federal financing requirements). Except as provided herein, the parking in the Transit Center will not be reserved for the exclusive use of any tenant or the customers of any tenant. The City will cause stalls that are located near the New Library to be reserved for handicap parking in accordance with applicable building codes and cause four (4) other stalls on the top floor of the Transit Center that are located near the New Library to be reserved for short-term parking. The restrictions contained herein will be evidenced by covenants against the lots in the University Place Town Center or the Condominium Documents, as the parties may agree.

G. Level loading area that has direct access to the elevator from the loading zone on Drexler Drive. The loading area must be suitable for a delivery van to park and unload into the building with little or no slope.

H. Two book drops that are wheelchair accessible.

I. Landscaping consistent with Town Center design standards.

J. Exterior signs consistent with the City sign code but which are clearly visible from Bridgeport Way.

6.3.2 Internal Improvements: The interior of the New Library must be completed to meet the following requirements:

A. The floors are to be of a raised floor design. The Library District will pay the cost of raised floors as provided in Section 6.3.3.

B. New carpeting, lighting, computer wiring, cabinetry, and wiring for the telephone system and security system where substantial reuse of existing furnishings and fixtures do not meet current Library District standards. The Library District will use all reasonable efforts to re-use existing furnishings and fixtures to the extent feasible and cost effective.

C. The internal design shall limit the number of posts or pillars so as to maximize the amount of open floor space.

D. A reference desk and circulation desk compatible with the size of the New Library and built-in shelving and cabinetry comparable to the existing Library Building.

E. All Improvements will be of a quality consistent with and no less than those of new, comparably sized, Pierce County Library branches (but not less than that of the facility that previously existed on the Library Property) and consistent with the quality implicit in the descriptions and estimates identified in memorandum dated May 30, 2006, provided by Koppe/Wagner, a copy of which is attached hereto as Exhibit F.

6.3.3 If the Library District requires improvements exceeding the standards of Section 6.3.1 and 6.3.2, then the Library District shall pay the increased design and construction costs associated with the improvement.

6.3.4 Excluded Items. The City will not be obligated to provide for unattached furniture and equipment and other personal property other than that set forth above.

6.3.5 Minimum Requirements for the Library Expansion Space. The City will construct or cause the construction of the Shell and Core of the Library Expansion Space on the ground floor of the Mixed Use Building. The size will meet the requirements set forth in Section 6.3.1.C above. For purposes of this Agreement, the Shell and Core will include: the foundations, exterior walls, windows, floors, ceilings and roof of the Library Expansion Space.

6.4 Architect Panel.

6.4.1 Panel. The parties agree that the design of the Mixed Use Building will have an impact on both the City and the Library District as users of that Building. Consequently, they have agreed to have a panel of two architects be involved in deciding architectural issues pertaining to the Mixed Use Building and the interior improvements of the New Library. One architect will be the Project Architect selected by the City, which is currently Andre Soluri. Another will be Library's Architect, selected by the Library District, which is currently Koppe/Wagner.

6.4.2 The Project Architect will be primarily responsible for the design of the Mixed Use Building, but shall design it in cooperation and with the approval of the the Library Architect. Similarly, the Library Architect will be primarily responsible for the design of the interior improvements to the New Library. It is contemplated that both architects (the Project Architect and the Library Architect) will strive to agree on the architectural design, specifications and plans for the Mixed Use Building and the interior improvements to the New Library. However, if there is not agreement, then either of the architects can call for a decision to be made through the following process.

6.4.3 Within seven (7) days after an architect sends written notice to the other architect and its client that the architect does not agree on the proposed design or specifications, the City Manager and the Director of the Library District will consult to see if they can agree on how to resolve the issue. The two parties can agree to extend the time period as needed. If no agreement is reached on the architectural issue within that time (or the agreed upon extension), then either of the architects can submit the dispute to the Arbitration Architect by notice to that architect as well as notice to the other architect, the Developer, the City and the Library District. Each architect or the party that they represent will then, within seven (7) days, submit such information as they deem necessary for the Arbitration Architect to resolve the dispute. The Arbitration Architect will promptly decide the issue by selecting one of the positions submitted; the Arbitration Architect must choose one of the party's proposals and may not create its own solution.

6.4.4 The Arbitration Architect will be Peter Rasmussen of Rasmussen Trebelhorn, who will serve only as the Arbitration Architect and will not otherwise be involved on behalf of any of the parties with respect to the Mixed Use Building. The Arbitration Architect's fees will be paid by that party whose position was not selected by the Arbitration Architect.

6.4.5 Library Architect. The City and the Library District agree that Koppe/Wagner will be the Library District's architect with respect to the Mixed Use Building, the interior improvements for the New Library and the Library Expansion Space. The Library's Architect will also be the inspecting architect during construction of the Mixed Use Building and will have the authority to review the plans and specifications on behalf of the parties, monitor the construction work and participate in developing the punch list items as set forth herein. The Library's Architect's fees shall be a Library Expense.

6.5 Schematic Plan. The City, in collaboration with the Project Architect and the Library's Architect, have prepared schematic plans of the Mixed Use Building, the New Library and the Library Expansion Space consistent with the Minimum Requirements set forth herein (the "Schematic Plans"). These plans are attached hereto as Exhibit G.

6.6 Design Development Plans. The Library, through its Architect, is in the process of creating Design Development Plans for the interior of the Library. It is expected that these will be completed and presented to the Library District's Board in May 2008.

6.7 Plans and Specifications. The City will develop detailed plans and specifications for the Mixed Use Building including the Atrium space, the New Library and the Library Expansion Space, which plans must be consistent with the Schematic Plans approved by the parties and meet the Minimum Requirements set forth herein (the "Plans and Specifications"). These Plans and Specifications may be phased with the core and shell plans and specifications in one set and the interior library tenant improvement plans and specifications in another set. The Library is responsible for submitting the New Library tenant improvement plans and specifications to the City for public bidding submittals in accordance with 7.1.1. The City shall have fifteen (15) days to review and approve these plans and specifications, to assure consistency with this Agreement and applicable bidding requirements. The Plans and Specifications will be of sufficient detail that they will be suitable for contractors to submit bids to complete the work necessary to construct the Mixed Use Building and the interior improvements for the New Library. The Plans and Specifications will require the use of new materials and will include proposed warranties to be given by the contractors and a time line for constructing the improvements.

6.7.1 Approval of Plans and Specifications. Upon completion of the Plans and Specifications, the City will deliver four (4) complete full-size sets of the Plans and Specifications to the Library District for its approval of the Atrium, New Library, and Library Expansion Space, which approval shall not be unreasonably withheld, conditioned or delayed. The Library District will have until its next scheduled Board meeting to review the Plans and Specifications and to either approve them or to request

changes; provided however, these plans must have been submitted to the Library District at least 15 days in advance of the next scheduled Board meeting. Any changes must be consistent with the Schematic Plans and the Minimum Requirements for the New Library described herein; however, the Library can require other changes if the Library District agrees to pay for the cost of such changes, and if the changes will not delay construction of the Mixed Use Building or adversely affect other portions of the Mixed Use Building or the users of those portions of the Mixed Use Building. If the Library District objects to the Plans and Specifications, the parties will meet and discuss the reasons for the Library District's objections. If the parties are unable to agree on the Plans and Specifications within thirty (30) days after notice of objection, then either party may require the dispute to be resolved pursuant to the Arbitration provisions set forth in Article XIII of this Agreement. Once approved as set forth herein, the approved Plans and Specifications will be deemed the "Final Plans and Specifications."

6.8 Changes in the Final Plans and Specifications. The Library District will have the right to request changes in the Final Plans and Specifications for interior improvements to the New Library within the scope of the work and the City agrees to cause such changes to be incorporated into the Mixed Use Building if any projected delay from the change is not more than thirty (30) days in the aggregate for all of the Library District's changes and if the Library District pays any increase in cost of construction associated with such changes; provided, however, the Library District shall not be obligated to pay for the cost of any change to correct deficiencies in the New Library or modifications caused by other changes in construction of the Mixed Use Building or the New Library not requested by the Library District. The process for the Library District to request such changes will be as follows:

6.8.1 The Library District will make a written request for a change proposal and submit it to the City;

6.8.2 The City will deliver to the Library District a written proposal for the change in the work with adequate detail to analyze the proposed pricing and time required for completion of the change;

6.8.3 The Library District will have ten (10) days to deliver written notice of whether the change proposal is accepted or rejected and the Library District's failure to deliver written notice within such ten (10) day period will be deemed a rejection; and

6.8.4 Except as provided in Section 6.8 above, the Library District will agree to pay the increased cost caused by the change.

6.9 Cost Overruns. Except for change orders caused by the Library District or for costs that the Library District has expressly agreed in writing to pay, once the Library District has approved the Final Plans and Specifications, all costs for construction of the Mixed Use Building, the New Library and the Library Expansion Space will be at the cost of the City as they may agree.

ARTICLE VII
CONSTRUCTION OF NEW LIBRARY

7.1 Project Schedule; Failure to Achieve Project Milestones. City and the Library District have agreed on a project schedule for the design, development, construction and completion of the New Library (including the Library Parking) which shall serve as target dates for achieving the matters set forth therein (the "Project Schedule"). The parties currently anticipate that City will design, develop, construct and achieve Substantial Completion of the New Library (including the Library Parking) within the Mixed Use Building or before January 1, 2010. City will have the right to revise the Project Schedule from time to time so long as the date for Substantial Completion of the New Library (including the Library Parking) is not extended by more than three months. City shall notify the Library District promptly of any change in the Project Schedule and the reasons therefor.

7.1.1 The following Target Dates will apply:

Event	Target Date
Delivery of Schematic Plans	Approved Dec. 2007
Delivery of Final Plans and Specifications (core and shell)	May 27, 2008
Library Delivery of Final Plans and Specifications (New Library tenant improvements)	November 12, 2008 (by Library)
Issuance of Building Permit.....	June 30, 2008
Commencement of Construction (core and shell)	July 18, 2008
Commencement of Construction (New Library tenant improvements)	May 22, 2009
Substantial Completion of New Library and Library Expansion Space (including Library Parking)	January 1, 2010

7.1.2 By the Target Dates set forth above, the City will either complete the applicable task or provide the Library District with a Statement of Delay. As used herein, a Statement of Delay is an explanation by the City as to (i) why the applicable deadline was not met, (ii) what actions will be taken to see that they are met within ninety (90) days of the applicable Target Date and (iii) whether the date for Commencement of Construction or Substantial Completion of the New Library will be extended from the Target Dates set forth above.

7.1.3 The failure of the City to commence construction of the Mixed Use Building on or before September 30, 2008 shall constitute an Event of Default under this Agreement. Similarly, if it reasonably appears to the Library District that the City is unlikely to commence construction of the Mixed Use Building on or before that date, then the Library District may issue a notice to the City for assurances that construction will commence by that date. If the Library District does not receive reasonably satisfactory assurances that construction will commence by that date, the failure to give such assurance will be an Event of Default.

7.1.4 The failure of the City to achieve Substantial Completion of the New Library on or before January 1, 2010 (subject to the three month extension set forth in Section 7.1 and any extension for Unavoidable Delay as defined below), shall constitute an Event of Default under this Agreement. Similarly, if at any time, it reasonably appears to the Library District that it is unlikely that the New Library will be substantially complete by January 1, 2010, then the Library District may issue a notice to the City for assurances that construction will be substantially complete by January 1, 2010. If the Library District does not receive reasonably satisfactory assurances that construction will be substantially complete by that date, the failure to give such assurance will be an Event of Default, unless the City's delay in Substantial Completion is beyond the City's reasonable control and the City is acting in good faith and with due diligence to complete the New Library, but such extension may not, in any case, extend more than 90 days (except for Unavoidable Delay) without the Library District's express written approval.

7.1.5 In the event the City fails to achieve Substantial Completion of the New Library by March 30, 2010 but prior to a declaration of an Event of Default, the Library District may grant, at the City's written request, an additional extension which shall not exceed three months, upon the payment of an extension fee of five thousand dollars (\$5000.00) per week for each week of delay.

7.2 Construction of New Library. The City agrees that it will build the New Library in accordance with the Final Plans and Specifications within the time set forth herein. The City will pay prevailing wages for construction of the Mixed Use Building and the New Library.

7.2.1 The City acknowledges its responsibility to comply with all laws, including laws affecting public works.

7.3 Time For Completion. The City agrees that it will cause the New Library (including the Library Parking) to be Substantially Complete by January 1, 2010, subject to an extension as set forth in Section 7.1.5 and any Unavoidable Delay.

7.4 Pre-Construction Conditions. Prior to commencing construction of the Mixed Use Building, the City will satisfy the following conditions, all of which must be met to the Library District's reasonable satisfaction:

7.4.1 The City must have selected a general contractor ("Contractor") to construct the Mixed Use Building including the New Library and Library Expansion Space.

7.4.2 The City shall have recorded a restrictive covenant against the University Place Town Center imposing the following use restrictions with respect to the University Place Town Center:

7.4.2.1 No use which emits an obnoxious or offensive odor, noise or sound which can be heard or smelled outside of the Mixed Use Building;

7.4.2.2 No use as a warehouse or storage operation or any assembling, manufacturing, refining, waste processing, industrial, agricultural, animal raising or boarding or mining operation; provided that this restriction shall not preclude a pet store or restaurant-brewery;

7.4.2.3 No use as an establishment selling or exhibiting primarily pornographic materials or any "adult use" as identified by the City of University Place Zoning Code;

7.4.2.4 No use for motor vehicle, truck, trailer, recreational vehicle or boat sales, leasing or display;

7.4.2.5 No use as a mortuary; and

7.4.2.6 No use as a massage parlor (provided, however, that this restriction shall not apply to a day spa that provides for therapeutic massage among other services), tattoo parlor, bail bonds, pawnshop, check cashing store, gambling operation, bawdy house or brothel, or any use in violation of applicable zoning and other governmental laws and regulations.

7.5 Quality of Construction; Warranty. The City will cause the Mixed Use Building (including the New Library and the Library Expansion Space) to be constructed in a good and workmanlike manner in accordance with the Final Plans and Specifications, and will require the Contractor to provide a one (1) year warranty of work and materials on terms reasonably acceptable to the parties.

7.6 Inspecting Architect. During construction, the Library District will be allowed to have the Library's Architect inspect construction of the Mixed Use Building.

7.7 Inspection at Completion. The Library District must be given at least fifteen (15) days in which to inspect the completed Mixed Use Building, the New Library and the Library Expansion Space for substantial compliance with the Final Plans and Specifications. If the inspection indicates that the Mixed Use Building, the New Library or the Library Expansion Space do not substantially comply with the requirements of the Final Plans and Specifications or there are items that need to be finished or repaired (the "Punch List"), then the City will cause all necessary modifications and repairs to be completed as soon as reasonably possible

and within ninety (90) days after the date of Substantial Completion unless the Library District agrees otherwise.

7.8 Unavoidable Delay. The existence of Unavoidable Delay shall excuse the Contractor or the City, as applicable, for resulting delays and changes in the Project Schedule. For purposes of this Agreement, "Unavoidable Delay" means acts of God, war or acts of terrorism, or strikes, riots and judicial and/or regulatory actions by federal, state or local governmental agencies that enjoin or delay construction on the Mixed Use Building, the New Library, the Library Expansion Space or the Transit Center, as applicable.

ARTICLE VIII

APPROVAL OF CONDOMINIUM DOCUMENTS AND OPERATING AGREEMENT

8.1 Preparation of Condominium Declaration. At least nine months prior to Substantial Completion of the Mixed Use Building, the City (or its assigns) will prepare a draft of the Condominium Declaration(s) for the Condominium(s) that may be necessary to create the Library Unit on the Lot 9 Property. The Condominium Declaration will have the New Library as a separate unit (the "Library Unit"), an Upper Level Unit, and such additional condominium units as the City may reasonably designate. The Library Expansion Space shall be a separate unit. The Transit Center can be a unit in the Condominium or the Mixed Use Building can be a condominium unit in a separate condominium consisting of the Transit Center and the Mixed Use Building. The Library Parking can either be one or more condominium units or can be limited common elements for the benefit of the Library Unit. The Condominium can also include one or more additional ground floor commercial units (the "Retail Units") which the City may sell or lease for retail, restaurant or commercial use consistent with use of the Library Unit as a Library.

8.2 Joint Discussions. After the City has provided the draft Condominium Declarations to the Library District, the parties agree to meet to discuss and jointly negotiate the final terms of the Condominium Declarations and related documents. It is contemplated that the Library District will have the right to be actively involved in the management of the condominium, including being on the Board of the Condominium Association and upon committees that can make decisions on day to day issues.

8.3 Approval of Condominium Declaration.

8.3.1 The Library District will have until 45 days prior to scheduled Substantial Completion date in which to approve or to provide its comments on the Condominium Declaration(s) which approval shall not be unreasonably withheld or conditioned; provided however, these plans must have been submitted to the Library District at least thirty (30) days in advance of a scheduled Board meeting. The Condominium Declaration will be deemed approved if objections are not received within such review period. If the Library District makes objections, then the parties agree to meet and to cooperate with each other on the form of the Condominium Declaration, however, in case of a dispute that is not resolved within thirty (30) days after notice of

objection, then either party may require the dispute to be resolved pursuant to the Arbitration provisions set forth in Article XIII of this Agreement.

8.3.2 Once approved as set forth herein, the Condominium Declaration(s) so approved will be the "Approved Condominium Declaration" and will not be materially changed without the consent of the City and the Library District, which consent will not be unreasonably withheld, conditioned or delayed. While the proposed Condominium Declaration(s) will be approved by the parties prior to Substantial Completion, the parties agree and acknowledge that the same may not be recorded until immediately prior to Closing and the same will be finalized based on the final as-built plans for the Mixed Use Building.

8.4 Preparation and Approval of Survey Map and Plans.

8.4.1 Prior to Substantial Completion of the New Library, the City, or its assigns, will cause one or more Survey Maps and Plans that comply with the Condominium Act, 64.34 RCW to be prepared. The Survey Map and Plans must be consistent with the Approved Condominium Declaration(s).

8.4.2 The Library District will have at least fifteen (15) days in which to review and approve the Survey Maps and Plans, which approval will not be unreasonably withheld so long as they are consistent with the Approved Condominium Declaration(s).

8.5 Preparation and Approval of Related Condominium Documents.

8.5.1 The City, or its assigns, will cause to be prepared Articles of Incorporation and By-laws for the condominium association, rules and regulations, offering circular and other documents pertaining to the Condominium that are required or appropriate for the Condominium(s) (the "Related Condominium Documents").

8.5.2 The Library District will have until its next scheduled Board meeting in which to review and approve the Related Condominium Documents, which approval will not be unreasonably withheld so long as they are consistent with the Approved Condominium Declaration(s); provided however, these documents must have been submitted to the Library District at least 30 days in advance of the next scheduled Board meeting.

8.5.3 Waiver of Article 4 of the Washington Condominium Act. RCW 64.34.400 allows the parties to waive Article 4 of the Washington Condominium Act, codified at RCW 64.34.400 through RCW 64.34.465, inclusive ("Article 4"), because the Library Unit described in this Agreement is restricted to nonresidential use. The parties hereby waive all rights under Article 4 including the requirement for delivery of a public offering statement, except that those provisions for express and implied warranties of quality are not waived.

8.6 Changes to the Approved Condominium Documents. The Approved Condominium Declaration(s), Approved Survey Maps and Plans, and the Approved Related Condominium Documents (collectively, the "Approved Condominium Documents") will not be

materially changed without the prior written consent of the City and the Library District, which consent will not be unreasonably withheld, conditioned or delayed if they are consistent with the Approved Condominium Declaration.

8.7 Preparation and Approval of an Operating Agreement. At least nine months prior to the Substantial Completion of the Mixed Use Building, the City will prepare a draft of an Operating Agreement that will set forth the proposed uses, maintenance, rights and responsibilities related to the Atrium and related spaces in the Mixed Use Building as well as a process for amending the Operating Agreement. This will address, among other things, practical day to day issues that are likely to arise. The parties then agree to meet to discuss and jointly negotiate the final terms of the Operating Agreement. If the parties do not agree on the terms of the Operating Agreement at least sixty (60) days prior to the date that Substantial Completion is projected to occur or within thirty (30) days after notice of objection, then either party may require the dispute to be resolved pursuant to the Arbitration provisions set forth in Article XIII of this Agreement.

ARTICLE IX CLOSING AND ESCROW OF THE NEW LIBRARY

9.1 Purchase Price of the New Library. Except as otherwise expressly provided herein, the City will pay for all construction costs to construct the New Library and Library Expansion Space.

9.2 New Library Closing. The closing of the sale of the New Library (the "New Library Closing") shall occur within fifteen (15) days after the later of: (a) Substantial Completion of the New Library and Expansion Space and (b) approval of the Condominium Declaration (s), Survey Maps and Plans, and Related Condominium Documents pursuant to Article VIII hereof, and (c) the City's lease of the Library Expansion Space.

9.3 Delivery by the City. At the New Library Closing, the City will obtain and deliver to the Library District through the Escrow Holder the following:

9.3.1 The executed Condominium Declaration(s) and Survey Map(s) and Plans for the Property and the Mixed Use Building, if applicable, in the forms previously approved by the parties;

9.3.2 The New Library Deed, duly executed and acknowledged by the City, in recordable form, together with a duly executed real estate excise tax affidavit;

9.3.3 Affidavit regarding foreign investors executed by the City that satisfies the requirements of Section 1445 of the United States Internal Revenue Code;

9.3.4 Such resolutions, authorizations, certificates and other documents or agreements relating to the City or Contractors as are reasonably required in connection with this transaction;

9.3.5 Evidence that a Certificate of Occupancy has been issued by the City for use of the New Library as a library;

9.3.6 Any reconveyance documents required to eliminate of record on title to the New Library, any construction financing obtained to build the Mixed Use Building, the New Library, or the Library Expansion Space, as applicable, and any other existing deeds of trust and other security documents which are a lien on the New Library and the Library Expansion Space and any affidavit required to eliminate the Title Insurer exception for construction liens and the rights of parties in possession that affect the New Library and the Library Expansion Space (but not for the balance of the Mixed Use Building);

9.3.7 Keys to all entrance doors and equipment and utility rooms and combinations to locks and security systems to be used by the Library;

9.3.8 An assignment of all warranties obtained in connection with the construction of the New Library and the Library Expansion Space to the extent assignable;

9.3.9 A copy of the as-built Plans and Specifications for the Mixed Use Building and the New Library and Library Expansion Space;

9.3.10 An amount equal to 150% of the cost to complete the Punch List items will be placed with the Escrow Agent, to be disbursed once all Punch List items have been completed, as certified by the Library's Architect

9.3.11 Execution of Lease on the Library Expansion Space with the Library District.

9.4 Delivery by Library District. On or before the New Library Closing Date, the Library District will deposit with Escrow Holder the following:

9.4.1 The original City Note, marked "paid in full";

9.4.2 An executed request for full reconveyance of the City Deed of Trust;

9.4.3 The executed real estate excise tax affidavit;

9.4.4 Such resolutions, authorizations, certificates and other documents or agreements relating to the Library District as are reasonably required in connection with the New Library Closing;

9.4.5 Execution of the Note and Deed of Trust in favor of the City to finance the Expansion Space; and

9.4.6 Execution of the Lease with City on the Expansion Space.

9.5 Other Instruments. The Library District and City shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to close the escrow and consummate the purchase of the New Library and the Library Expansion Space in accordance with the terms hereof.

9.6 Prorations. Because the City and the Library District are exempt from real property taxes, no tax proration will be required. All special assessments, if any, will be prorated as of Closing.

9.7 Utilities and Other Expenses. All revenue and all expenses of the New Library, including, but not limited to water, sewer and utility charges, Condominium assessments, if any, allocated to the New Library and the Library Expansion Space (and the Library Parking, if a separate condominium unit), if applicable, and all other expenses normal to the ownership, use, operation and maintenance of the Library Unit and the Library Expansion Space shall be prorated as of the Closing Date.

9.8 New Library and Library Expansion Space Closing Costs. The City will pay the premiums for an ALTA owner's extended coverage title policy with liability in an amount equal to the amount the City paid for the New Library and the Library Expansion Space, all real estate taxes applicable to the New Library and the Library Expansion Space through Closing, the cost of any transfer taxes applicable to the sale, the escrow fees, the cost of any survey, and the cost to record the deeds to the New Library and the Library Expansion Space.

9.9 Possession. The Library District will be entitled to possession upon Closing of the transfer of the New Library to the Library District. The Library District will be entitled to possession of the Temporary Facilities for up to 60 days after Substantial Completion of the New Library.

9.10 Title Policies. The Title Company shall issue the New Library Title Policy subject only to the exceptions approved by Library District pursuant to Article IV.

ARTICLE X REPRESENTATIONS AND WARRANTIES

To induce City to enter into this Agreement and the transactions contemplated hereby, the parties make the following representations and warranties as of the date of this Agreement and again as of the Closing Date:

10.1 The Library District's Representations. The Library District represents and warrants to City as follows:

10.1.1 Litigation. There is no claim, litigation, proceeding (including eminent domain proceedings) or governmental investigation pending, or, so far as is known to the Library District, threatened against or relating to the Library District, the Library District's properties or business, the property on which the Mixed Use Building will be constructed, the transactions contemplated by this Agreement or any dispute arising out of any contract or commitment entered into regarding the Mixed Use Building.

10.1.2 No Defaults. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will conflict with or constitute a default under any agreement or instrument that affects the Mixed Use Building or to which the Library Property is subject.

10.1.3 Organization. The Library District is a rural library district validly existing under the laws of the State of Washington. This Agreement has been duly authorized, executed and delivered by the Library District, and when duly executed by the City will constitute the legal, valid and binding obligation of the Library District enforceable in accordance with its terms.

10.2 City's Representations.

10.2.1 Title. The City believes it is the owner of fee simple title to the property upon which the Mixed Use Building will be constructed subject only to exceptions that will not affect the marketability of title to the New Library.

10.2.2 Tenant Leases. There are no leases, licenses or other agreements granting any person or persons the right to use or occupy the New Library or any portion thereof, except that if the City has exercised its right to lease the Library Expansion Space, then it may have agreements related to its subleasing of the Library Expansion Space.

10.2.3 Litigation. There is no claim, litigation, proceeding (including eminent domain proceedings) or governmental investigation pending, or, so far as is known to the City, threatened against or relating to the New Library or the Mixed Use Building or the transactions contemplated by this Agreement that would prevent the City from meeting its obligations as set forth herein.

10.2.4 No Defaults. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will conflict with or constitute a default under any agreement or instrument that affects the City or to which the Mixed Use Building is subject.

10.2.5 No Prior Options, Sales or Assignments. The City has not granted any options nor committed nor obligated itself in any manner whatsoever to sell the New Library or any portion thereof to any party other than Library District.

10.2.6 Environmental Compliance. To the City's knowledge it has not caused or permitted the property upon which the Mixed Use Building will be constructed to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process hazardous substances or waste or solid waste except for storage and use of Hazardous Materials in small quantities in compliance with all Environmental Laws as may be necessary to maintain the Mixed Use Building and except as disclosed in environmental reports previously delivered to Library District, has no knowledge of the presence or any release of any Hazardous Materials or waste affecting the Mixed Use Building.

10.2.7 Organization. City is a municipal corporation validly existing under the laws of the State of Washington. This Agreement has been duly authorized, executed and delivered by City, and when duly executed by the Library District will constitute the legal, valid and binding obligation of the City enforceable in accordance with its terms.

ARTICLE XI DEFAULT; REMEDIES

11.1 Default by City.

11.1.1 Except for those matters that are described herein as an Event of Default, if the City breaches this Agreement, Library District shall give written notice to City of the same, whereupon City shall have thirty (30) days within which to cure that breach. If the breach cannot be cured within that time, then the City will have ninety (90) days from the Library District's notice in which to cure that breach so long as it commences to cure the breach within the first thirty (30) days and diligently proceeds thereafter to cure the breach. Failure to cure the breach within said time will be an Event of Default.

11.1.2 Upon an Event of Default, the Library District may exercise any and all remedies available to it in law or in equity, including foreclosing on the City Deed of Trust.

11.2 Default by the Library District. In the event of a breach or default in or of this Agreement or any of the representations, warranties, terms, covenants, conditions or provisions hereof by the Library District, City shall have, as its sole and exclusive remedies, the right to (a) demand and have specific performance of this Agreement; or (b) terminate this Agreement upon written notice without liability to the Library District and receive reimbursement for all Library Expenses that the City had previously funded.

ARTICLE XII POST-CLOSING DEVELOPMENT

12.1 In General. The parties anticipate relocating the Library to the New Library and that some post-closing cooperation will be necessary, as further set forth in this Article.

12.2 Interior Furnishings. City shall not be obligated to contribute additional furniture and personal property for the New Library, but will be required to provide the interior improvements set forth as part of the Minimum Requirements, including the circulation desk and reference desk and built-in shelving comparable to the existing Library Building. The unattached furniture and fixtures currently in the Library Building shall be relocated by the Library District to the New Library but the cost of such moving will be a Library Expense. The Library District shall also be liable for purchasing additional furniture and fixtures for the New Library; these expenses will not be a Library Expense reimbursable by the City. The Library District will be solely responsible for any interior improvements to the Library Expansion Space including any furniture, fixtures, built-in shelving, books and any other trade improvements desired by the Library District. None of the interior improvements to the Library Expansion Space are a Library Expense and will not be reimbursed by the City.

12.3 Moving Expenses. The Library District shall be responsible for relocating the Library District Personal Property. Any costs incurred by the Library District in relocating the Library District Personal Property (exclusive of staff personnel costs) will be a Library Expense. If the Library District is given less than four (4) months' notice for a move, Library Expenses will also include overtime and additional employee expenses incurred in connection with such move.

12.4 Operating Costs. The Library District shall be solely responsible for the costs associated with operating the Library at the New Library site. These costs will not be reimbursed by the City.

ARTICLE XIII ARBITRATION

The parties desire to provide for an independent resolution process ("Resolution Process") that will occur between the City and the Library District with respect to all change orders, determination of Substantial Completion of the New Library and identification of items to be included on the Punch List for the New Library and other disputes which may arise between the parties under this Agreement. In the event that the City and Library District are not able to agree on a matter within the time periods specified in this Agreement, either City or Library District may, by delivering written notice to the other party, commence the Resolution Process. As soon as possible but in any case within twenty (20) days (unless the Arbitrator grants more time) following the date of such notice, the City and the Library District will submit the necessary information with respect to such matter as to which there is a disagreement to an independent arbitrator mutually acceptable to and jointly selected by the parties ("Arbitrator") to make a final determination. If the parties do not agree upon an Arbitrator, then upon five days' notice to the other party, either party may seek the appointment of the Arbitrator pursuant to RCW 7.04.010 et seq. (the "Arbitration Act"). The Arbitrator will have the powers and authority given under the Arbitration Act and any disputes concerning the arbitration process will be resolved pursuant to the Arbitration Act. A determination by Arbitrator shall be in writing and shall be binding on City and Library District.

ARTICLE XIV MISCELLANEOUS

14.1 Brokers and Finders. Each party represents to the other that no broker has been involved in this transaction. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection herewith other than as set forth above, City, if such claim is based upon any agreement alleged to have been made by City, hereby agrees to indemnify Library District against and hold Library District harmless from any and all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorneys' fees and costs) which Library District may sustain or incur by reason of such claim, and Library District, if such claim is based upon any agreement alleged to have been made by the Library District, hereby agrees to indemnify City against and hold City harmless from any and all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorneys' fees and costs) which City may sustain or incur by reason of such claim. The

indemnification provisions set forth in this Section 14.1 shall survive the termination of this Agreement or the Closing Date.

14.2 Notices. All notices, demands, requests, consents and approvals which may, or are required to, be given by any party to any other party hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

City: City of University Place
3715 Bridgeport Way West, Suite B
University Place, WA 98466-4456
Fax: (253) 460-2546
Attn: Robert W. Jean, City Manager

With copies to: Kirkpatrick & Lockhart Preston Gates Ellis LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158
Fax: (206) 623-7022
Attn: Jay Reich

and to: City of University Place
3715 Bridgeport Way West, Suite B
University Place, WA 98466-4456
Fax: (253) 460-2504
Attn: Janean Parker, City Attorney

The Library District: Pierce County Library System
3005 112th Street East
Tacoma WA 98446-2215
Fax: (253) 537-4600
Attn: Neel Parikh, Library Director

With a copy to Gordon, Thomas, Honeywell, Malanca,
Peterson & Daheim LLP
1201 Pacific Avenue, Suite 2100
Tacoma WA 98402
Fax: (253) 620-6565
Attn: William E. Holt

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. Notices may also be given by facsimile transmission with verbal confirmation of receipt from the receiving party. All notices that are mailed shall be deemed received two business days after mailing. All other notices shall be deemed complete upon actual receipt or refusal to accept delivery.

14.3 Amendment; Waiver. No modification, termination or amendment of this Agreement may be made except by written agreement or as otherwise may be provided in this Agreement. No failure by the Library District or City to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice as provided in Section 14.2 hereof, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. All the terms, provisions, and conditions of this Agreement shall inure to the benefit of and be enforceable by the Library District's or City's respective successors and assigns.

14.4 Survival. All provisions of this Agreement which involve obligations, duties or rights that have not been determined or ascertained as of the Closing Date or the recording of the New Library Deed and all representations, warranties and indemnifications made in or to be made pursuant to this Agreement shall survive the Closing Date and/or the recording of the New Library Deed.

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

14.6 No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between City and the Library District except that of seller and purchaser of real property. No term or provision of this Agreement is intended to be, or 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.

14.7 Governing Law; Time. This Agreement and the rights of the parties hereto shall be governed by and construed in accordance with the laws of the State of Washington. Time is of the essence of this Agreement.

14.8 Authority. The parties signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

14.9 No Third Party Beneficiaries. The rights and remedies under this Agreement are solely for the benefit of the parties hereto and/or their successors and assigns. No term or provision of this Agreement is intended to be, nor shall it be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such person, firm, organization or corporation shall have any right or cause of action hereunder.

14.10 Assignments. Except as otherwise expressly provided herein, the City may not assign its rights and obligations herein without the consent of the Library District, which consent shall not to be unreasonably withheld or delayed. The Library District may not assign its rights under this Agreement.

14.11 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

14.12 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

14.13 Time Limits/Extensions. For any action requiring legislative approvals, the time deadlines set forth herein shall be extended to five (5) days following the next regularly-scheduled meeting of such legislative body.

14.14 Recitals. The Recitals to this Agreement are incorporated herein by this reference.

ARTICLE XV SECURITY; LIENED PROPERTY

15.1 Security. Contemporaneously with the Closing of the Property Transfer Agreement, and as a condition to closing that Property Transfer Agreement, the City executed and delivered to the Library District the City Deed of Trust on the Liened Property, as those terms are defined in the Property Transfer Agreement. In addition to securing the City Promissory Note, the City Deed of Trust will also secure the City's obligations as set forth herein. The City agrees that, if it defaults under this Agreement and fails to deliver the New Library to the Library District, that the Library District's damages will include the cost of acquiring title to the Liened Property and constructing a New Library on the Liened Property meeting the requirements of Section 6.3 herein. Although it is difficult to estimate what those damages will be, the parties agree that they could be \$6,000,000, more or less, and that, for purposes of obtaining title insurance on the City Deed of Trust, the parties agree to insure the property for \$6,000,000.

15.2 Compaction. The City agrees that the Liened Property currently has fill material that is not suitable to support a building suitable to meet the requirements of Section 6.3. The City agrees to compact the soils in a manner to support such a building by September 1, 2009.

This Amended and Restated New Library Development Agreement amends the New Library Development Agreement dated July 19, 2006, which amendment is effective as of the ____ day of _____, 2008.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

City:

THE CITY OF UNIVERSITY PLACE,
a Washington municipal corporation

By: _____
Robert W. Jean, City Manager

Approved as to Form:

Janean Parker, City Attorney

The Library District

**PIERCE COUNTY RURAL LIBRARY
DISTRICT,** a Washington rural library district

By: _____
Neel Parikh, Library Director

Approved as to Form:

William E. Holt, Library Attorney

EXHIBIT A

UNOFFICIAL DOCUMENT

EXHIBIT B

UNOFFICIAL DOCUMENT

EXHIBIT C

Approved Legal Description – Mixed Use Building

UNOFFICIAL DOCUMENT

EXHIBIT D

UNOFFICIAL DOCUMENT

EXHIBIT E

**Copy of Koppe/Wagner Memorandum
Dated May 30, 2006**

UNOFFICIAL DOCUMENT