

RESOLUTION NO. 682

A RESOLUTION OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, APPROVING A PURCHASE, DEVELOPMENT AND RIGHT OF FIRST OFFER AGREEMENT BETWEEN THE CITY OF UNIVERSITY PLACE AND SEB, INCORPORATED, AND A CONDOMINIUM DECLARATION FOR UNIVERSITY PLACE TOWN CENTER LOT 8

WHEREAS, the City of University Place has been engaged in a planning and development process for many years to create a visually attractive mixed-use town center to serve as the civic and commercial focal point of the community, and in 1998, adopted a Comprehensive Plan and Land Use Map that called for the creation of a town center, and

WHEREAS, in 1999, following a series of public meetings, public design workshops and public processes, the City adopted a Town Center Plan that established a vision for redevelopment of the City's central business area and which includes the following core objectives and strategies: (i) create a high quality comprehensive integrated retail, commercial and residential anchor for downtown University Place; (ii) create a special identity and gathering place for the City and its residents with access to downtown businesses; (iii) create a visually attractive and pedestrian oriented space in the downtown area; (iv) enhance public security and provide City residents with additional housing opportunities through the introduction of multi-family residential buildings in downtown; (v) encourage tourism; and (vi) revitalize the business district by creating a development which will improve the financial stability and general economic vitality of the City, preserve jobs, attract additional private investment in downtown and generate additional sales and property tax revenue for the City, and

WHEREAS, in 2002 and again in 2007, the City Council adopted a five-year Economic Development Strategic Action Plan and established an Economic Development Task Force to promote business growth and development within the City's business districts, ensure an economically sustainable future, and pursue the goals to create a University Place Town Center, with a mix of residential, commercial, cultural, community, public and open spaces, and

WHEREAS, pursuant to Ordinance Nos. 409, 469, 470, and 532, the City amended its Comprehensive Plan to provide for a Town Center overlay zone, adopted design standards and guidelines for the overlay zone and established a Planned Action Area within the overlay zone. This area consisted of 24 lots of real property totaling approximately 31.7 acres of size located on the east and west sides of Bridgeport Way W. roughly between 35th Street and 38th Street, and

WHEREAS, the City adopted various amendments to its Zoning Code pertaining to height, density, setbacks and the application of design standards and guidelines in the overlay zone, and City and recorded a Binding Site Plan in 2007, which was amended in 2009, and

WHEREAS, in furtherance of the Town Center Plan, the City, over the course of several years, acquired and currently owns certain lots located within the Town Center Planned Action Area which are depicted on the Binding Site Plan and referred to as Lots 1, 2, 3, 4, 7, 8, 9, 10, 11 and 12, and Tracts A & B, and the public right of way in and about the foregoing (the "Town Center Property"), and

WHEREAS, the Town Center Property was acquired by the City specifically for the development of public facilities and private commercial uses to fulfill the goals of the Town Center Plan, and

WHEREAS, since acquiring the Town Center Property, the City has diligently pursued achievement of the goals of the Town Center Plan, including completion of major site preparation work on Town Center Property to prepare it for public and private development including construction of utilities,

podium decks, more than 500 stalls of structured public parking (the "Town Center Garage"), a public plaza, public open space and street and sidewalk improvements, and

WHEREAS, in 2006, the City entered into an Agreement with the Pierce County Rural Library District for development of a joint Library and Civic Building in the middle of Town Center, and the new Library/Civic Building is complete and open, and

WHEREAS, pursuant to the goals of the Town Center Plan, the City has for several years sought to sell all or portions of Lots 1, 2, 3, 4, 7, 8, 10, 11 and 12, and Tracts A & B within the Town Center Property for private investment and development, and

WHEREAS, the City has conducted public request for proposal processes and listed the properties with a commercial real estate broker, and

WHEREAS, one key element of the City's vision is the development of quality mixed use multifamily residential facilities within Town Center, which assist in complying with the mandates imposed on the City under the State's Growth Management Act, and effectively protect the City's single family residential neighborhoods, and

WHEREAS, SEB, Incorporated, is a developer and operator of quality multifamily residential facilities who desires to purchase the development rights above Lot 8 of the Town Center Property as a condominium and secure by easement parking one stall per unit for the Project in the Town Center Garage, from the City to construct and operate an approximately 100-unit residential facility over approximately 12,000 square feet of commercial space, and

WHEREAS, the Developer desires to secure right of first offer on Lot 10 of the Town Center Property for the development of an additional approximately 100-unit market rate apartment facility over approximately 12,000 square feet of commercial space and parking, and

WHEREAS, the construction and operation of such residential facilities by the Developer would be entirely consistent with, and assist in furthering the goals of, the Town Center Plan, and

WHEREAS, as described in greater detail in the proposed agreement, consideration from the Developer to the City for acquisition of the development site and an easement for parking in the Town Center Garage includes the purchase price of eight hundred thousand dollars (\$800,000.00) (inclusive of any City development impact fees, but not inclusive of any permit fees), along with an obligation to construct and operate a new mixed use facility with 100 market rate residential units and 12,000 square feet of street level commercial space and necessary infrastructure, with the associated benefit to the City that the residential and commercial facility will bring desirable population density to Town Center, and create a significant amount of new leasable commercial space which will assist in attracting other private investment and development.

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

Section 1. Incorporation of Recitals. The recitals are hereby incorporated herein as if set forth in full.

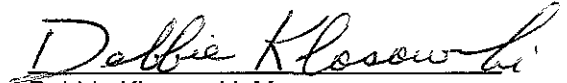
Section 2. Legislative Determination of Consideration. The Council of the City of University Place has considered the proposed transaction, including the consideration offered by SEB, Incorporated and the property, easement, right of first offer and associated improvements to be provided by the City, all as described in the proposed transaction documents, and hereby makes a legislative determination that the consideration offered by SEB, Incorporated is sufficient and appropriate consideration for the property, easement and associated work to be provided by the City.

Section 3. Approval of Form of Documents. The City Council hereby approves execution of the Purchase, Development and Right of First Offer Agreement and the Condominium Declaration in substantially the form of the documents accompanying this Resolution.

Section 4. Completion of Transaction. The City Manager is authorized to take and execute any additional measures or documents that may be necessary to complete this transaction, which are consistent with the approved form of documents attached to this Resolution, and this Resolution.

Section 5. Effective Date. This Resolution shall be effective immediately upon passage by the City Council.

ADOPTED BY THE CITY COUNCIL SEPTEMBER 26, 2011.


Debbie Klosowski, Mayor

ATTEST:


Debora Nicholas, Deputy City Clerk

After Recording Return To:

City of University Place
Office of the City Attorney
3715 Bridgeport Way W.
University Place, WA 98466
Attn: City Attorney

**PURCHASE, DEVELOPMENT AND RIGHT OF FIRST OFFER AGREEMENT
BETWEEN THE CITY OF UNIVERSITY PLACE AND S.E.B., INC.**

THIS AGREEMENT ("Agreement") is dated this 7th day of October, 2011 (the "Effective Date"), between the City of University Place ("City"), a Washington municipal corporation, acting in its proprietary capacity, and SEB, Incorporated, (the "Developer"), a Washington corporation and its assigns (hereinafter collectively referred to as "Parties") and is made pursuant to the following recitals and the terms and conditions herein.

RECITALS

A. The City has been engaged in a planning and development process for many years to create a visually attractive mixed-use town center to serve as the civic and commercial focal point of the community. In 1998, the City adopted a Comprehensive Plan and Land Use Map that called for the creation of a town center.

B. In 1999, following a series of public meetings, design workshops and public processes, the City adopted a Town Center Plan that established a vision for redevelopment of the City's central business area and which includes the following core objectives and strategies: (i) create a high quality comprehensive integrated retail, commercial and residential anchor for downtown University Place; (ii) create a special identity and gathering place for the City and its residents with access to downtown businesses; (iii) create a visually attractive and pedestrian oriented space in the downtown area; (iv) enhance public security and provide City residents with additional housing opportunities through the introduction of multi-family residential buildings in downtown; (v) encourage tourism; and (vi) revitalize the business district by creating a

development which will improve the financial stability and general economic vitality of the City, preserve jobs, attract additional private investment in downtown and generate additional sales and property tax revenue for the City.

C. In 2002 and again in 2007, the City Council adopted a five-year Economic Development Strategic Action Plan; the Council also established an Economic Development Task Force to promote business growth and development within the City's business districts to ensure an economically sustainable future. The Economic Development Task Force and the Strategic Action Plan identifies as one of the goals of the City the creation of University Place Town Center, with a mix of residential, commercial, cultural, community, public and open spaces. The development concept for Town Center is a mixed-use neighborhood that creates an integrated retail and residential center in the City.

D. Pursuant to Ordinance Nos. 409, 469, 470, and 532, the City amended its Comprehensive Plan to provide for a Town Center overlay zone, adopted design standards and guidelines for the overlay zone and established a Planned Action Area within the overlay zone. This area consisted of 24 lots of real property totaling approximately 31.7 acres of size located on the east and west sides of Bridgeport Way W. roughly between 35th Street and 38th Street. The City also adopted various amendments to its zoning code pertaining to height, density, setbacks and the application of design standards and guidelines in the overlay zone. The City completed and recorded a Binding Site Plan in 2007, which was amended in 2009, under Auditor's Recording No. 200909185003.

E. In furtherance of the Town Center Plan, the City, over the course of several years, acquired and currently owns certain lots located within the Town Center Planned Action Area which are depicted on the Binding Site Plan and referred to as Lots 1, 2, 3, 4, 7, 8, 9, 10, 11 and 12, and Tracts A & B, and the public right of way in and about the foregoing (the "Town Center Property"). The Town Center Property was acquired by the City specifically for the development of public facilities and private commercial uses to fulfill the goals of the Town Center Plan.

F. Since acquiring the Town Center Property, the City has diligently pursued achievement of the goals of the Town Center Plan. The City has completed major site preparation work on Town Center Property to prepare it for public and private development including construction of utilities, podium decks, more than 500 stalls of structured public parking (the "Town Center Garage"), a public plaza, public open space and street and sidewalk improvements.

G. In 2006, the City entered into an Agreement with the Pierce County Rural Library District for development of a joint Library and Civic Building in Town Center. The new Library/Civic Building is complete and open.

H. Pursuant to the goals of the Town Center Plan, the City has for several years sought to sell all or portions of Lots 1, 2, 3, 4, 7, 8, 10, 11 and 12, and Tracts A & B within the Town Center Property for private investment and development. The City has conducted public request for proposal processes and listed the properties with a commercial real estate broker. One key element of the City's vision is the development of quality mixed use multifamily residential facilities within Town Center.

I. Developer, SEB, Incorporated, is a developer and operator of quality multifamily residential facilities. The Developer desires to purchase the development rights above Lot 8 of the Town Center Property as a condominium ("the Property"), and secure by easement parking for one stall per unit for the Project in the Town Center Garage from the City to construct and operate an approximately 100-unit residential facility over commercial space (the "Project"). In addition, the Developer desires to secure a Right of First Offer ("ROFO") for the purchase of Lot 10 of the Town Center Property ("ROFO Property") for the development of an additional approximately 100-unit market rate apartment facility over approximately 12,000 square feet of commercial space (the "ROFO Project") including securing by easement additional parking at one stall per unit for the ROFO Project in parking to be constructed on Lot 10. The construction and operation of such residential facilities by the Developer would be entirely consistent with, and assist in furthering the goals of, the Town Center Plan.

J. As described in greater detail in the Agreement, consideration from the Developer to the City for acquisition of the Property and an easement for 100 stalls of parking in the Town Center Garage includes the purchase price of eight hundred thousand dollars \$800,000.00, (inclusive of any City development impact fees, but not inclusive of any permit fees) along with an obligation to construct a new mixed use residential and commercial facility. Additional consideration to the City is that the residential and commercial facility will bring desirable population density to Town Center which will assist in attracting other private development. By Resolution No. 682, adopted September 26, 2011, the University Place City Council considered and determined that the Developer was providing sufficient consideration for purchase of the Property and approved the execution of this Agreement.

K. The Parties intend by this Agreement to set forth their mutual agreement and undertakings with regard to the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual undertaking and promises contained herein, and the benefits to be realized by each party and in future consideration of the benefit to the general public by the creation and operation of the Project upon the Property, and as a direct benefit to the City and other valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals; Definitions. Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein. Capitalized terms not otherwise defined herein shall have the meaning set forth in Exhibit A attached hereto and by this reference incorporated herein.

2. Purchase of Development Rights Over Lot 8.

2.1 Delineation of the Property. Prior to Closing, the Parties will define and describe the Property that is the subject of this Agreement, which is to be legally separated by condominium, and which will be accompanied by a permanent exclusive easement providing for parking at one stall per unit in the Town Center Garage and running with the land. The costs of and associated with the necessary survey and recording shall be borne by the City.

2.2 Purchase and Sale. In consideration of their mutual covenants set forth in this Agreement, City agrees to sell to Developer, and Developer agrees to purchase and accept from City, for the Purchase Price and on the terms and conditions set forth in this Agreement, the property located in University Place, Pierce County, Washington, a Unit of the University Place Town Center Lot 8 Condominium to be comprised of the air space of the existing Lot 8 parking structure (the "Property"), all to be more particularly surveyed and described as a part of completing and recording the Condominium Declaration substantially in the form of that attached as Exhibit D.

2.3 Purchase Price. The purchase price for the Property is eight hundred thousand dollars (\$800,000.00) (the "Purchase Price" which is inclusive of any City development impact fees, but not inclusive of any permit fees for the Project). Upon execution of the Agreement by both Parties, Developer will deposit \$24,000.00 (3% of the Purchase Price as an earnest money deposit ("Deposit") in a strict joint order escrow with Ticor Title and Escrow Company ("Ticor Title"), as escrowee, which Deposit shall be credited to the Purchase Price at Closing unless otherwise disbursed pursuant to this Agreement.

2.4 Completion of Lot 8 Infrastructure. The infrastructure on Lot 8, comprised primarily of the Lot 8 portion of the Town Center Parking Garage which will underpin and support the Property is largely finished. However, some elements, including elevators and certain building systems (described more particularly on Exhibit C "Lot 8 City Improvements") remain to be completed. As more specifically described in Section 5, Development, herein, the City is responsible for completing the Lot 8 City Improvements prior to, or concurrent with, construction of Developer's Project on the Property. The Lot 8 City Improvements include the cost of constructing one of two elevators to serve the garage and Project; provided, however, that the Parties agree that the City's responsibility for the elevator costs shall not exceed the maximum total amount of \$60,000.00, regardless of the actual cost of the elevator. Other than the Lot 8

City Improvements, the Developer is solely responsible for funding and constructing any additional infrastructure necessary to construct the Project on the Property.

2.5 Developer Project Requirements. As more specifically described in Section 5 Development herein, Developer will construct and open for business a market rate multifamily residential mixed use facility consisting of approximately 100 Market Rate Apartment Units, and approximately 12,000 square feet of Market Place level commercial space on the Property within twelve (12) months of the City's substantial completion of the Lot 8 City Improvements, subject to extension as provided herein, or by mutual agreement, or due to Unavoidable Delay. This timeline represents the outside date for completion and shall not preclude the Developer and City Representative from agreeing to schedule and construct the Lot 8 City Improvements and Developer's Project on a shorter concurrent schedule. For purposes of this Agreement "Market Rate Apartment Units" shall mean apartments available without rent or income restrictions or rent subsidies. Any proposed change from Market Rate Apartment Units during the life of the Project shall require prior approval of the City by Resolution of the University Place City Council.

2.6 Covenants, Conditions and Restrictions (CC&Rs). Developer agrees to subject its interests (and to obtain any Mortgagee's consent to subject its interests) in the Property to Covenants, Conditions and Restrictions governing the University Place Town Center site ("CC&Rs"), which will include a prohibition on Developer having to join any merchants' association or pay any dues therefor, the right of Developer's residents and customers to park in the parking garage, an obligation of Developer to pay a proportionate share of certain annual common area maintenance charges (the portion to be expressed as a fraction, the numerator of which is the area of conditioned space contained in Developer's building, and the denominator of which is the total building area located on the south side of Bridgeport Way W, and to amendment(s) thereto from time to time if any 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) enable any government agency other than the City or reputable private insurance company to insure or guarantee mortgage loans on the Property or any other property that is subject to such CC&Rs; or (iv) otherwise satisfy the requirements of any government agency or governmental regulations; provided, however, that in no event shall the CC&Rs or any amendment thereto prohibit or impair Developer's business operation or use of the Property as a multifamily residential facility or its integrated commercial space. Developer shall have the right to approve the CC&Rs, which approval shall not be unreasonably withheld.

2.7 Environmental Condition of the Property. City represents and warrants to the best of its knowledge that the Property is free of any contamination by hazardous and/or toxic materials ("Hazardous Substances") and that at the time of transfer of title

there will be no conditions or circumstances related to the Property that could directly or indirectly impose or give rise to any costs or liability, contingent or otherwise, to Developer under any applicable Environmental Standards.

3. Developer's Review and Design and Permitting Period.

3.1 Review Period. Developer shall have twenty (20) calendar days from the execution of this Agreement to review the feasibility of the Property for development, including survey, property condition, environmental reports and zoning. In the event that Developer, in its sole and absolute discretion, is dissatisfied with any of the items above at any time during the Review period including any allowed extension(s), Developer shall be permitted to terminate the Agreement, in which event the Deposit promptly shall be repaid to Developer and neither Party shall have any further obligation or liability to the other. All activities performed by Developer during the Review Period shall be at Developer's sole expense.

3.2 Title Review. Ticor Title and Escrow Company shall provide City Representative and Developer with a preliminary commitment for the Property ("Title Commitment") within twenty (20) days following the Effective Date of this Agreement, together with complete, legible copies of any exceptions identified in Schedule B thereof. Developer shall conduct its review of the Title Commitment in accordance with the following procedures:

3.2.1 Developer's Notice. Developer shall have fifteen (15) business days after receipt of the Title Commitment to notify City Representative of its approval or disapproval of each exception in Schedule B of the Title Commitment. Failure to deliver such notice by that date shall constitute Developer's approval of all exceptions in Schedule B.

3.2.2 City's Notice. City Representative shall have ten (10) business days after receipt of Developer's notification in which to notify Developer whether or not it elects to cure or remove any of the disapproved exceptions of which City Representative receives timely notice. City Representative's failure to so notify Developer shall constitute City Representative's election to not remove all such exceptions. City Representative shall remove all exceptions it elects to remove on or before the Closing Date.

3.2.3 Developer's Election. If City Representative does not elect to remove all exceptions disapproved by Developer, Developer may elect to terminate this Agreement by written notice to City Representative given within five (5) business days following City Representative's notice, in which event this Agreement shall automatically terminate, and neither Party hereto shall have any further rights or obligations under this Agreement. If Developer does not elect to terminate this Agreement within the time frame set forth herein, disapproved exceptions that City

Representative has not elected to remove shall become Permitted Exceptions for the Property.

3.3 Design and Permitting Period. Developer shall have ninety (90) days from the expiration, or earlier waiver of the Review Period to design the Project and file a complete permit application for construction of Developer's facility on the Property. In the event that Developer, in its sole and absolute discretion, is dissatisfied with any conditions, restrictions, limitations, mitigation measures or other matters affecting the feasibility of the Project in Developer's sole judgment at any time during the Design and Permitting period including any allowed extension(s), Developer shall be permitted to terminate the Agreement, in which event the Deposit promptly shall be repaid to Developer and neither Party shall have any further obligation or liability to the other. All activities performed by Developer during the Design and Permitting Period shall be at Developer's sole expense.

3.4 Developer's Access. Developer and its authorized contractors, consultants and agents shall have access to the Property at all reasonable times during the Design and Permitting Period. Upon request by City, Developer shall provide City with a list of the contractors, consultants and agents, including contact information for each, that Developer has engaged to perform any inspections. Before any soils sampling or other invasive testing, Developer shall submit a plan for such sampling for City's approval, which will not be unreasonably withheld, conditioned or delayed. Developer shall restore the Property, including filling test holes, to eliminate any damage to the Property caused by Developer, its contractors, consultants or agents in the conduct of the inspections; provided, however, Developer shall have no obligation to remediate any prior-existing defects or other conditions in or on the Property, including, without limitation, remediation of any existing Hazardous Substances. If Developer discovers any defects or conditions in or on the Property that create a dangerous condition, including the discovery of any Hazardous Substances, Developer shall promptly notify City of such defect or condition. Developer agrees to indemnify City and to hold City, City's agents and employees harmless from and against any and all losses, costs, damages, claims or liabilities including, but not limited to, construction, mechanic's and materialmen's liens and attorneys' fees, to the extent caused by Developer's entry upon the Property, including the conduct of Developer's Inspections, by Developer or its contractors, consultants or agents; provided, however, such indemnity obligations shall not apply to any and all losses, costs, damages, claims or liabilities to the extent caused by any existing environmental contamination in or on the Property that may be discovered or adversely impacted by Developer's conduct of its Inspections and such losses, costs, damages, claims or liabilities shall be the responsibility of the City.

4. Closing of Sale.

4.1 Timing. Closing shall occur within twenty (20) days following the issuance of all building permit(s) for the Project.

4.2 Title to Property. Upon Closing, the City Representative shall execute and deliver to Developer a bargain and sale deed ("Deed") conveying fee title to the Property. The conveyance of any interest in the Property and appurtenant rights shall be subject to the provisions of this Agreement and the Condominium Declaration.

4.3 Title Insurance. On the Closing Date, City Representative shall cause Tigor Title to issue to Developer a standard coverage Owner's Policy of Title Insurance ("Title Policy") insuring good and marketable fee simple title in Developer against any loss or damage by reason of defects in City's title, other than the Permitted Exceptions. Developer may, at its sole cost and expense, request extended coverage or endorsements to the Title Policy, but the availability of extended coverage or such endorsements shall not be a condition precedent to closing; provided, however, that City Representative shall sign any owner's affidavit or similar document required by Tigor Title to enable Developer to obtain extended coverage.

4.4 "AS-IS" Sale. By electing to proceed with the purchase of the Property, Developer represents that it has had an opportunity to and has conducted a thorough investigation of the Property and is in all respects knowledgeable and familiar with the present condition and state of repair of the Property. Developer acknowledges that it is concluding the purchase of the Property based solely upon Developer's inspection and investigation of the Property and that the Property is being sold to Developer in an "AS-IS" condition and state of repair, and with all faults, of any kind or nature and without any representations or warranties, express, implied or statutory, except that City owns the Property. IN PARTICULAR, BUT WITHOUT LIMITATION, CITY MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE PHYSICAL CONDITION OR VALUE OF THE PROPERTY, SOILS CONDITIONS, OR OTHER PHYSICAL CHARACTERISTICS OF ALL OR ANY PORTION OF THE PROPERTY OR THE SUITABILITY OF ALL OR ANY PORTION OF THE PROPERTY FOR DEVELOPER'S INTENDED DEVELOPMENT. CITY MAKES NO REPRESENTATION WHATSOEVER REGARDING THE FINANCIAL FEASIBILITY OF ALL OR ANY PORTION OF THE PROJECT. Upon recording of the bargain and sale deed to the Property, Developer shall be deemed to have accepted the Property in its "AS-IS, WHERE-IS" condition and state of repair and does hereby waive and release and agrees to defend, indemnify and hold City, its officials, officers, employees and agents harmless from any and all damages, losses, liabilities, costs and expense whatsoever (including, without limitation, reasonable attorneys' fees and costs) and claims thereof, whether direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way arising out of or in connection with the physical or environmental condition of the Property or any Requirement of Law applicable thereto.

4.5 Receipt of City Disclosure Statement. Prior to execution of this Agreement, City Representative has provided Developer with a City Disclosure Statement in the form set forth in RCW 64.06.015. As provided by Washington law, the City Disclosure

Statement is for disclosure only and shall not be considered a part of this Agreement, and does not constitute any representation or warranty by City.

4.6 Conditions Precedent to City's Obligation to Sell Property. The City's obligation to close the sale of the Property is subject to satisfaction of each of the following conditions which must be met to the reasonable satisfaction of the City Representative, and any or all of which may be waived by City Representative in writing at its option:

4.6.1 Legal Delineation of the Property. The Property that is the subject of this Agreement shall have been delineated from the balance of Lot 8 of the Town Center Property, to be legally separated by condominium.

4.6.2 Compliance by Developer. Developer shall have performed, observed and complied with all of the material covenants, agreements, obligations and conditions required by this Agreement to be performed, observed and complied with by it prior to or as of the Closing Date.

4.6.3 Correctness of Representations and Warranties. The representations and warranties of Developer set forth in this Agreement shall be true and correct on and as of the Closing Date.

4.6.4 No Bankruptcy. Neither Developer nor any of its managing members/partners/directors: (a) has applied for or consented to the appointment of a receiver, custodian or trustee for it or any of its property, (b) has become insolvent, (c) has failed generally or admitted in writing its inability to pay its debts as they become due, (d) has consolidated, liquidated or dissolved, (e) has filed a petition or action for relief relating to any federal or state bankruptcy, reorganization, insolvency, moratorium or similar statute or any other law or laws for the relief of or relating to debtors, or (f) has made an assignment for the benefit of its creditors or entered into an agreement of composition with its creditors, nor (g) has a petition been filed by or against Developer under any federal or state bankruptcy, reorganization, insolvency, moratorium or similar statute, or any other law or laws for the relief of or relating to debtors.

The foregoing conditions are solely for the benefit of City. If any of the foregoing conditions are not met to the reasonable satisfaction of the City Representative prior to the Closing Date, or been waived in writing by the City Representative on or before the Closing Date, City Representative shall have the right, in his sole discretion, to terminate this Agreement at any time thereafter, upon written notice to Developer, whereupon this Agreement shall terminate, the Deposit promptly shall be repaid to Developer, and except as

otherwise expressly provided herein, neither Party hereto shall have any further rights, duties, liabilities or obligations to the other.

4.7 Conditions Precedent to Developer's Obligation to Purchase Property. Developer's obligation to close the sale of the Property is subject to satisfaction of each of the following conditions which must be met to the reasonable satisfaction of Developer, and any or all of which may be waived by Developer in writing at its option:

4.7.1 Legal Delineation of the Property. The Property that is the subject of this Agreement shall have been delineated from the balance of Lot 8 of the Town Center Property, to be legally separated by condominium.

4.7.2 Compliance by City. City shall have performed, observed and complied with all of the covenants, agreements, obligations and conditions required by this Agreement to be performed, observed and complied with by it prior to the Closing Date.

4.7.3 Correctness of Representations and Warranties. The representations and warranties of City set forth in this Agreement shall be true and correct on and as of the Closing Date.

4.7.3.1 City's Representations.

4.7.3.1.1 City is a municipal corporation duly organized and validly existing under the laws of the State of Washington and has full legal right, power and authority to own its property and carry on its business as now being conducted. All corporate action on the part of City necessary for the authorization, execution, delivery and performance of this Agreement has been duly taken. City has full power and authority to enter into, execute and deliver this Agreement and to perform its obligations under this Agreement.

4.7.3.1.2 This Agreement, when executed and delivered by City, and assuming it has been duly authorized, executed and delivered by Developer, will be the legal, valid and binding agreement of City, enforceable in accordance with its terms.

4.7.3.1.3 No consent, approval, permission, authorization, order or license of any person or any Governmental Body (except as described in the Agreement, and building and other permits necessary for construction) is necessary in connection with the execution, delivery and performance of this Agreement by City or any transaction contemplated hereby, except as may have already been obtained by City prior to the date of this Agreement. There is no provision in City's organizational documents

which would be contravened by the execution and delivery of this Agreement or by the performance of any provision, condition, covenant or other term required to be performed by City under this Agreement.

4.7.3.1.4 There is no pending or threatened litigation, tax claim, action, dispute or other proceeding of any nature whatsoever affecting City or any officer, trustee or managerial member of City which could have a material adverse effect on the legal existence or powers of City or its financial conditions or operations or have a material adverse effect on the ability of City to perform its obligations under this Agreement and City is not in default with respect to any Requirements of Law that might result in any such effect.

4.7.3.2 Developer's Representations.

4.7.3.2.1 Developer is a corporation duly organized and validly existing under the laws of the State of Washington, and has the power to own its property and carry on its business as now being conducted. All actions on the part of Developer and all company or other actions on the part of its members necessary for the authorization, execution, delivery and performance of this Agreement have been duly taken. Developer has full power and authority to enter into, execute and deliver this Agreement and to perform its obligations under this Agreement.

4.7.3.2.2 This Agreement, when executed and delivered by Developer, and assuming it has been duly authorized, executed and delivered by City, will be the legal, valid and binding agreement of Developer, enforceable in accordance with its terms.

4.7.3.2.3 No consent, approval, permission, authorization, order or license of any person or of any Governmental Body (except as described in the Agreement, and building and other permits necessary for construction) is necessary in connection with the execution, delivery and performance of this Agreement by Developer or any transaction contemplated hereby, except as may have already been obtained by Developer prior to the date of this Agreement. There is no provision in Developer's organizational documents which would be contravened by the execution and delivery of this Agreement or by the performance of any provision, condition, covenant or other term required to be performed by Developer under this Agreement.

4.7.3.2.4 There is no pending or threatened litigation, tax claim, action, dispute or other proceeding of any nature whatsoever affecting Developer or any managing member or officer of Developer which could have a material adverse effect on the legal existence or powers of Developer or its financial

conditions or operations or have a material adverse effect on the ability of Developer to perform its obligations under this Agreement and Developer is not in default with respect to any Requirements of Law that might result in any such effect.

4.7.3.3 Duration of Representations. Each of the foregoing representations and warranties shall expire and be of no further force or effect, unless either Party shall have made a claim based upon an alleged breach of such representations and warranties within seven (7) years following Final Completion of the Project.

4.7.4 CC&Rs. Developer shall have approved the CC&Rs described in Paragraph 2.6.

4.7.5 Condition of Property. City shall deliver sole and exclusive possession of the vacant Property to Developer at Closing (including removal of any visible debris) and not subject to any encumbrance not approved by Developer).

4.7.6 Title Policy. Ticor Title shall issue to Developer the Title Policy (or later date commitment) for the Property.

4.8 Closing Date. As used in this Agreement, "Closing" and "Closing Date" mean the date on which all appropriate documents are recorded and proceeds of the sale are available for disbursement to City. Developer and City Representative shall place into escrow with Ticor Title all instruments, documents and moneys necessary to complete the sale of the Property in accordance with this Agreement. In the event either the City or Developer has been unable, despite its reasonable, good faith efforts to satisfy all of the conditions for Closing set forth in this Agreement by the Closing Date, then unless the City Representative and Developer agree to a further extension of the Closing Date, this Agreement shall automatically terminate, the Deposit shall promptly be returned to Developer and except as otherwise expressly provided herein, neither Party hereto shall have any further rights, duties, liabilities or obligations to the other. If City is the party that is unable to perform all of its obligations hereunder at the Closing, City agrees also to reimburse Developer for all of its cost and expenses in preparing to close this transaction. If Developer is the party that is unable to perform all of its obligations hereunder at the Closing, City shall have the right to retain the Deposit but shall not have the right to sue Developer for specific performance.

4.8.1 Escrow. On or before the Closing Date, the following documents and moneys shall be delivered to Ticor Title, as Escrowee, each of which shall be in form and substance reasonably acceptable to the attorney for the other party:

4.8.1.1 By City. City Representative shall deliver the following original documents, duly executed and acknowledged by City:

- 4.8.1.1.1 The Deed.
- 4.8.1.1.2 Real Estate Excise Tax Affidavit.
- 4.8.1.1.3 FIRPTA Affidavit.
- 4.8.1.1.4 Any easements pertaining to the Property.
- 4.8.1.1.5 Owner's affidavit
- 4.8.1.1.6 Any and all such other documents as may be necessary, and as are consistent with the provisions of this Agreement.

4.8.1.2 By Developer. Developer shall deliver the following original documents, duly executed and acknowledged by Developer:

- 4.8.1.2.1 Real Estate Excise Tax Affidavit.
- 4.8.1.2.2 Any and all other documents and agreements as may be required by City or Ticor Title and as are consistent with the terms of this Agreement.

4.9 City's Closing Costs. In connection with the Closing, City shall pay the cost of the Title Policy with standard owner's coverage, all Survey costs, one-half of the Closing escrow fees, the cost of recording documents to clear City's title and City's attorneys' fees .

4.10 Developer's Closing Costs. In connection with the Closing, Developer shall pay the cost of the Title Policy to the extent in excess of the premium for standard owner's coverage (if Developer elects to obtain extended coverage), together with all endorsements to the Title Policy requested by Developer, one-half of the Closing escrow fees, all recording fees for the Deed, and Developer's attorneys' fees.

4.11 Prorations. All utilities and special assessments shall be prorated as of the Closing Date. Because City is exempt from property taxes, no proration of ad valorem property taxes is required; however, Developer shall be responsible for payment of all property taxes and all special assessments and local improvement district assessments which affect the Property, from and after the Closing Date. City represents that no special assessments or local improvement district assessments currently exist or are contemplated in connection with the Project.

4.12 Possession. Developer shall be entitled to sole and exclusive possession of the Property on the applicable Closing Date, free and clear of all liens, encumbrances and exceptions other than the Permitted Exceptions, and any liens, encumbrances or other exceptions arising through the actions of Developer or its agents, employees or consultants.

5. Development.

5.1 Developer's Completion of Construction. Developer shall achieve substantial completion within twelve (12) months of Closing, or twelve (12) months of the City's substantial completion of the Lot 8 City Improvements if that is later, subject to extension as provided herein, or by mutual agreement, or due to Unavoidable Delay. This timeline represents the outside date for completion and shall not preclude the Developer and City Representative from agreeing to schedule and construct the Lot 8 City Improvements and Developer's Project on a shorter concurrent schedule.

5.2 Enforcement. In the event Developer fails to commence construction within the time described above and any extension for Unavoidable Delay, City will have the right to purchase the Property from Developer prior to the commencement of construction, together with all improvements thereon and appurtenances thereto, for a price equal to the cash purchase price paid by Developer at Closing, but not including impact fees or permit costs. Closing of the City's repurchase shall occur within thirty (30) days following written notice and Developer will transfer title to the Property to City by bargain and sale deed, free and clear of all liens and encumbrances except Permitted Exceptions. Ticor Title, as Escrow Agent, shall conduct the Closing, and Closing costs and prorations shall be handled in the same manner as provided in Section 4 Closing of Sale of this Agreement. If the City notifies Developer that it intends to repurchase the Property, but fails to close the repurchase within sixty (60) days thereafter, City shall not be in default under this Agreement, but Developer shall have the right to sell the Property to another Developer expressly subject, however, to all of the terms, covenants, conditions and provisions set forth in this Agreement.

5.3 Certificate of Completion. Once Final Completion of the Project has occurred, Developer shall file a Notice of Completion with City. Within three (3) business days after receipt of the Notice of Completion, City shall inspect the Project and if City concurs that all improvements are complete, City shall furnish the Developer with a Certificate of Completion in substantially the form attached as Exhibit B. The Certificate of Completion shall be a conclusive determination that the Parties' agreements with respect to the Developer's construction obligations for the Project have been met. The Certificate shall be in a form that enables it to be recorded in the official records of Pierce County, Washington.

6. Right of First Offer for Purchase of Lot 10.

6.1 Grant of Right of First Offer. In consideration of and contingent upon the full performance by the Developer of all its obligations under this Agreement with respect to the Project on Lot 8, the City hereby grants to Developer a Right of First Offer for sufficient rights in Lot 10 to construct an additional mixed use building with approximately 12,000 square feet of commercial space and up to 100 units of market rate apartments ("the "ROFO" and "ROFO Property" respectively), and to acquire the

ROFO Property on the terms and conditions set forth in this Agreement, in the event that the City elects to sell the ROFO Property during the ROFO Term. By granting this ROFO, the City does not undertake any obligation to fund or develop any additional improvements on Lot 10, or to sell any portion of Lot 10 in its existing condition. In the event that the City does elect to sell any portion of Lot 10 with or without a condominiumization, during the ROFO Term, the requirements of this ROFO will apply. Where this Section refers to a City decision to construct improvements on Lot 10, and a City decision to sell Lot 10, those City decisions shall be evidenced by a resolution approved by the University Place City Council.

6.2 Term of ROFO. The term of the ROFO shall commence upon the Effective Date of this Agreement and terminate on December 31, 2014, as may be extended pursuant to this Agreement (the "ROFO Term").

6.3 Price Contingency. The City and Developer acknowledge that Lot 10 has not been developed by the City with a parking structure similar to that existing on Lot 8. The City may or may not elect to construct such parking improvements on Lot 10 during the ROFO Term, in the City's sole discretion. In the event the City elects during the ROFO Term to construct a parking structure on Lot 10, including 100 stalls of parking for the ROFO Project sufficient to support Developer's ROFO Project, and decides to proceed with the sale of the development rights over the structure and the 100 stalls of parking by easement, the purchase price shall be \$900,000.00 (inclusive of any City development impact fees, but not inclusive of any permit fees) along with an obligation to construct a new mixed use residential and commercial facility within twelve (12) months of Closing. In the event the City elects not to construct parking improvements on Lot 10, but elects nevertheless to sell Lot 10 in its then-existing state, the purchase price shall be established as provided below. The purchase price shall be subject to the same terms and conditions including that it is inclusive of any City development impact fees, but not inclusive of any permit fees, along with an obligation to construct a new mixed use residential and commercial facility within twelve (12) months of Closing.

6.4 Procedure for Offer. Prior to entering into any agreement to sell or transfer all or part of the ROFO Property (the "Offered Property"), City shall notify Developer by written notice (the "First Offer Notice") when and if City desires to sell or transfer all or a portion of Lot 10 whether on the open market or pursuant to an existing offer to purchase received by City, in any manner. Pursuant to such First Offer Notice, City shall offer to sell the Offered Property or the applicable portion thereof to Developer in the First Offer Notice. The First Offer Notice shall (A) set forth (i) The price previously established in this Agreement or if the City has not developed a parking structure on Lot 10, the purchase price at which City is willing to sell the Offered Property to Developer (the "ROFO Purchase Price"), which ROFO Purchase Price shall be determined by City, (ii) the required "Deposit" which Deposit shall not exceed three percent (3%) of the ROFO Purchase Price, (iii) the "Contingency Date" which shall in no event be less than thirty (30) days following the "Effective Date" of the Purchase Agreement, and (iv) the

Closing Date, which shall in no event be less than sixty (60) days following the Effective Date of the Purchase Agreement; and (B) be executed by City.

6.5 Procedure for Acceptance.

6.5.1 Acceptance of Offer by Developer. If Developer wishes to exercise its Right of First Offer in response to a First Offer Notice, then within ten (10) business days following Developer's receipt of the First Offer Notice (the "Developer's Notice Period"), Developer shall notify City in writing either (i) of Developer's exercise of the Right of First Offer or (ii) of Developer's interest in exercising the Right of First Offer, subject to a reservation of right to further negotiate the ROFO Purchase Price and/or any other terms of the First Offer Notice ("Developer's Exercise Notice"). If Developer does not reserve the right in Developer's Exercise Notice to further negotiate the ROFO Purchase Price and/or any other terms in the First Offer Notice, Developer shall deliver to City concurrent with Developer's delivery of Developer's Exercise Notice, the Deposit required in the First Offer Notice. If, however, Developer in Developer's Exercise Notice reserves the right to further negotiate as provided hereinabove, then City shall negotiate with Developer during a period not to exceed fifteen (15) business days following City's receipt of Developer's Exercise Notice (the "Negotiation Period") the terms of the First Offer Notice, including, if requested by Developer, the ROFO Purchase Price. City will act in good faith as to scheduling and attending meetings with Developer during the Negotiation Period, provided that nothing herein shall be deemed in any manner to require City to agree to change any terms of City's First Offer Notice, and any such changes may be made or rejected by City, in City's sole and absolute discretion. If, during the Negotiation Period, City and Developer mutually agree upon a change in the ROFO Purchase Price and/or such other terms in the First Officer Notice, then prior to the expiration of the Negotiation Period, City and Developer shall execute a purchase agreement reflecting the agreed transaction, the "Effective Date" of the purchase agreement shall be deemed the date on which the purchase agreement is delivered to an escrow holder as fully executed by both parties, and City shall concurrently deliver to the escrow holder the Deposit previously delivered with the Developer's Exercise Notice. If Developer's Exercise Notice does not reserve negotiation rights, City and Developer shall execute a purchase agreement reflecting the transaction described in the First Offer Notice.

6.5.2 Non-Acceptance of Offer by Developer. If Developer does not timely accept the terms of the First Offer Notice, or if City and Developer do not mutually agree upon the ROFO Purchase Price and/or such other terms in the First Offer Notice by the expiration of the Negotiation Period, and/or the purchase agreement terminates, in accordance with the terms thereof, then City shall be free to sell the Offered Property, in the same configuration as offered to

Developer, to any third party thereafter on any terms elected by City in its sole discretion.

6.6 Term/Termination of Right of First Offer. The term of the Right of First Offer shall commence upon the recording of the Declaration and shall terminate:

6.6.1 At the expiration of the ROFO Term.

6.6.2 With respect to any Offered Property, upon Developer's failure to timely exercise the Right of First Offer with respect to such Offered Property (including timely delivery of a Deposit and execution of a purchase agreement), and, thereafter, the closing of the sale of such Offered Property.

6.6.3 With respect to any Offered Property, after the timely exercise of the Right of First Offer with respect to any Offered Property by Developer with a request to further negotiate, and the failure of Developer and City to reach a mutual agreement to proceed with the purchase in accordance with the First Offer Notice and purchase agreement or any amendment thereof prior to the expiration of the Negotiation Period, and, thereafter, the sale of the Offered Property.

6.7 Development. Following Closing, the development of Developer's ROFO Project on the ROFO Property shall be completed within twelve (12) months of Closing.

7. Applicability of Terms and Conditions.

All terms and conditions described in this Agreement apply to both the Project and the ROFO Project.

8. Indemnification.

8.1 Developer's Indemnification of City. Developer shall protect, defend, indemnify, and save harmless City and its respective officers, officials, employees and agents (collectively, "City Indemnified Parties"), from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever arising out of or in any way resulting from Developer's officers, employees, agents, contractors and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Agreement. Developer's obligations under this Section shall include, but not be limited to:

8.1.1 The duty to promptly accept tender of defense and provide defense to City at Developer's own expense.

8.1.2 The duty to indemnify and defend City from any claim, demand and/or cause of action brought by or on behalf of any of Developer's employees

or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of Developer's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects City only, with a full and complete indemnity and defense of claims made by Developer's employees or agents. The Parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

8.1.3 In the event City incurs any judgment, award, and/or costs arising therefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be paid by Developer.

8.1.4 Notwithstanding the provisions contained above, Developer's obligation to indemnify City shall not extend to any claim, demand or cause of action to the extent caused by the negligence of City or breach of this Agreement by City.

8.2 City's Indemnification of Developer. City shall protect, defend, indemnify, and save harmless Developer and its respective officers, officials, employees and agents (collectively, "Developer Indemnified Parties"), from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever arising out of or in any way resulting from City's officers, employees, agents, contractors and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Agreement. City's obligations under this Section shall include, but not be limited to:

8.2.1 The duty to promptly accept tender of defense and provide defense to Developer at City's own expense.

8.2.2 The duty to indemnify and defend Developer from any claim, demand and/or cause of action brought by or on behalf of any of City's employees or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of City's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects Developer only, with a full and complete indemnity and defense of claims made by City's employees or agents. The Parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

8.2.3 In the event Developer incurs any judgment, award, and/or costs arising therefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be paid by City.

8.2.4 Notwithstanding the provisions contained above, City's obligation to indemnify Developer shall not extend to any claim, demand or cause of action to the extent caused by the negligence of Developer or breach of this Agreement by Developer.

8.3 Notice of Claim. Any person making a claim for indemnification pursuant to this Section (an "Indemnified Party") must give the Indemnifying Party written notice of such claim (an "Indemnification Claim Notice") promptly after the Indemnified Party receives any written notice of any action, lawsuit, proceeding, investigation or other claim (a "proceeding") against or involving the Indemnified Party, or otherwise discovers the liability, obligation or facts giving rise to such claim for indemnification; provided that the failure to notify or delay in notifying the Indemnifying Party will not relieve the Indemnifying Party of its obligations pursuant to this Section except to the extent that the Indemnifying Party's ability to defend against such claim is actually prejudiced thereby. Such notice shall contain a description of the claim and the nature and amount of such loss (to the extent that the nature and amount of such loss is known at such time).

9. Insurance.

9.1 Developer Insurance. From and after the Closing Date and until the issuance of a Certificate of Completion for the Project, Developer shall maintain property insurance in builder's risk form and shall maintain and shall cause each of its Contractors and/or subcontractors to maintain commercial general liability insurance, automobile liability insurance and worker's compensation insurance as required under this Agreement. The cost of such insurance shall be paid by Developer and/or its General Contractor or its consultants. If at any time any of the policies required under this Agreement shall be or become unsatisfactory to City due to a change in form or substance, or if an insurance company issuing any such policy shall be or become unsatisfactory to City because it no longer meets the minimum rating or criteria set forth herein, Developer shall, upon notice to that effect from City, promptly obtain a new policy from a qualified insurer, and shall submit the same to City, with certificates and endorsements, for approval. The Developer shall provide the City with written notice of any policy cancellation for the Contractor or any of its subcontractors for this work within two days of its receipt of such notice.

9.1.1 Subcontractors. Developer shall include all Contractors and subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements from each Contractor and subcontractor. Insurance coverage provided by contractors and subcontractors as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.

9.1.2 Insurance Policy Requirements. Insurance policies required under this Agreement shall be issued by companies authorized to do business in the state of Washington with the following qualifications:

9.1.2.1 The companies must be rated no less than "A," as to general policy holders rating and no less than "VII" as to financial category

in accordance with the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Incorporated.

9.1.2.2 The policies shall name the City as an additional insured for liability purposes and as a loss payee.

9.1.2.3 The policies shall be issued as primary policies.

9.1.2.4 Each such policy or certificate of insurance mentioned and required in this Section shall have attached thereto (1) an endorsement that such policy shall not be canceled without at least thirty (30) days' prior written notice to the Developer and the City; (2) an endorsement to the effect that the insurance as to any one insured shall not be invalidated by any act or neglect of any other insured; (3) an endorsement pursuant to which the insurance carrier waives all rights of subrogation against the Parties hereto; and (4) an endorsement pursuant to which this insurance is primary and noncontributory.

9.1.3 The certificates of insurance and insurance policies shall be furnished to the Developer and the City prior to commencement of construction under this Agreement. The certificate(s) shall clearly indicate the insurance and the type, amount and classification, as required for strict compliance with this Section.

9.1.4 Cancellation of any insurance or non-payment by the Developer of any premium for any insurance policies required by this Agreement shall constitute an Event of Default under Section 12 of this Agreement, with a cure period of seven (7) calendar days. In addition to any other legal remedies, the City at its sole option after written notice may obtain such insurance and pay such premiums for which, together with costs and attorneys' fees, the Developer shall be liable to the City.

9.1.5 Adjustments. The types of policies, risks insured, coverage amounts, deductibles and endorsements may be adjusted from time to time as the Developer and City may mutually determine.

9.2 Other Insurance Provisions. In addition to the requirements set forth above, the insurance policies required by this Agreement are to contain or be endorsed to contain the following provisions where applicable:

9.2.1 The City Indemnified Parties are to be covered as additional insureds as respects:

9.2.1.1 Liability arising out of activities performed by or on behalf of Developer, its members, managers, employees, agents, contractors and/or subcontractors of all tiers in connection with this Agreement. Developer's insurance coverage shall be primary insurance as respects the City Indemnified Parties and shall include a severability of interests (cross liability). Any insurance and/or self-insurance maintained by any of the City Indemnified Parties shall not contribute with Developer's insurance or benefit Developer in any way.

9.2.1.2 Developer's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

9.2.1.3 Each insurance policy shall be written on an "occurrence" form, excepting that insurance for professional liability, errors and omissions, when required, may be acceptable on a "claims made" form.

9.2.1.4 If coverage is approved (if approval is required above) and purchased on a "claims made" basis, Developer warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the work which is subject to said insurance.

9.2.1.5 By requiring such minimum insurance, City shall not be deemed to, or construed to, have assessed the risks that may be applicable to Developer under this Agreement. Developer shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage.

9.2.1.6 Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(ies). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement.

9.2.2 Verification of Coverage. Developer shall furnish or cause its General Contractor(s) to furnish City with certificates of insurance and endorsements required by this Agreement. The certificates and endorsements for each policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by City and are to be received and approved by City prior to the commencement of construction of the

Project. City reserves the right to require complete certified copies of all required policies at any time.

10. Construction Liens. Upon Final Completion of the Project and upon City's request during the progress of the Project, Developer shall submit evidence that all payrolls, material bills and other indebtedness relating to the work have been paid. Developer shall notify City upon the filing of any Lien or the service of any notice in connection with the Project, and shall remove or discharge any such Lien within thirty (30) days of filing.

11. Damage and Destruction; Condemnation.

11.1 Damage and Destruction. In the event there is any damage or destruction to the Project prior to Final Completion, Developer shall give City prompt written notice thereof generally describing the nature and cause of such casualty and the extent of the damage or destruction to the Project. Developer shall cause reconstruction and restoration of the Project in accordance with the applicable Construction Documents and the provisions of this Agreement. Developer will assign all insurance proceeds which Developer may be entitled to receive prior to Final Completion of the Project with respect to damage or destruction to the Construction Lender, or if there is no Construction Lender, a third party insurance trustee mutually acceptable to City and Developer who shall disburse insurance proceeds to reimburse Developer for the cost of restoration or repair in accordance with the terms, covenants, conditions, provisions and procedures set forth in the Construction Loan Documents or if there are no Construction Loans outstanding at the time of such damage or destruction in periodic installments based upon the percentage of completion and otherwise in accordance with standard commercial construction loan administration.

11.2 Condemnation. As used in this Agreement, the term "condemnation" refers to a taking by any public or governmental authority under power of eminent domain or any transfer in lieu thereof.

11.2.1 Condemnation Prior to Closing Date. In the event condemnation proceedings are threatened against a material portion of the Property prior to the Closing Date, either party shall have the right by giving written notice of such decision to the other within fifteen (15) days after receiving written notice of such condemnation proceedings to terminate this Agreement, and except as otherwise expressly provided herein, neither party shall have any further rights or obligations to the other under this Agreement and all condemnation awards payable to the property owner by reason of such condemnation, if any, shall be paid to City. If neither party elects to terminate this Agreement, the Agreement shall remain in full force and effect, Developer shall accept the Property affected thereby in its then condition and state of repair, the applicable Purchase Price shall not be affected thereby and all condemnation awards payable to

the property owner by reason of such condemnation, if any, shall be paid or assigned to Developer upon Closing.

11.2.2 Condemnation After Closing Date. In the event of a condemnation of the Property after the Closing Date, to the extent that the Project may still be constructed in accordance with the Construction Documents or may be constructed in accordance with the Construction Documents as modified by changes acceptable to Developer and the City, Developer shall proceed to construct the Project in accordance with the Construction Documents, as modified, if applicable.

12. Default.

12.1 The following events shall constitute a "Default" or an "Event of Default":

12.1.1 The failure of either Party to keep, observe, or perform any of its duties or obligations under this Agreement; or

12.1.2 If Developer files a petition for bankruptcy or makes a general assignment for the benefit of Developer's creditors, or if a receiver is appointed on account of Developer's insolvency and any such petition or appointment is not dismissed within ninety (90) days.

12.2 City Remedies Upon Developer Event of Default. Upon any Event of Default by Developer, City shall give Developer written notice of the same, whereupon following receipt of such written notice Developer shall have thirty (30) days within which to commence all necessary action to cure any such Event of Default, (and if such cure is commenced, proceed to diligently and continuously prosecute such cure to completion within a reasonable period of time thereafter not to exceed sixty (60) days), except with respect to Events of Default for which a shorter cure period is stated herein. In the event Developer fails to cure such Event of Default within the time period set forth above, City shall be entitled to exercise the specific remedies identified in this Agreement for particular defaults by the Developer, and where no specific remedy is identified, the City may exercise one or more of the following remedies:

12.2.1 Prior to Closing on the Property. If Developer fails to perform any material obligation under this Agreement, City shall give the Developer written notice of same, whereupon following receipt of such written notice, Developer shall have thirty (30) days within which to commence all necessary action to cure any such failure (and if cure is commenced within such thirty (30) day period, proceed to diligently complete such cure within a reasonable period of time). In the event Developer fails to cure such default within the time period set forth herein and provided City is not in default hereunder, then City will have the right, as its sole and exclusive remedy, to terminate this Agreement, and except as

otherwise expressly provided herein neither party shall thereafter have any further rights or obligations under this Agreement.

12.2.2 After Closing. With respect to a Developer Event of Default occurring after Closing, and provided City is not in default hereunder, the City may pursue any available legal remedy except specific performance.

12.3 Developer Remedies Upon City Default. Upon any Event of Default by City, Developer shall give City written notice of the same, whereupon following receipt of such written notice City shall have thirty (30) days within which to commence all necessary action to cure any such Event of Default, (and if such cure is commenced, proceed to diligently and continuously prosecute such cure to completion within a reasonable period of time thereafter not to exceed 60 days), except with respect to Events of Default for which a shorter cure period is stated herein. In the event City fails to cure such Event of Default within the time period set forth above, Developer shall be entitled to exercise the specific remedies identified in this Agreement for particular defaults by the City, and where no specific remedy is identified, the Developer may exercise one or more of the following remedies:

12.3.1 Prior to Closing on Property. If City fails to perform any material obligation under this Agreement, Developer shall give the City written notice of same, whereupon following receipt of such written notice, City shall have thirty (30) days within which to commence all necessary action to cure any such failure (and if cure is commenced within such thirty (30) day period, proceed to diligently complete such cure within a reasonable period of time). In the event City fails to cure such default within the time period set forth herein and provided Developer is not in default hereunder, then Developer will have the right, as its sole and exclusive remedy, to terminate this Agreement, and except as otherwise expressly provided herein neither party shall thereafter have any further rights or obligations under this Agreement.

12.3.2 After Closing. With respect to a City Event of Default occurring after Closing, and provided Developer is not in default hereunder, the Developer may pursue any other available legal remedy except specific performance.

12.4 Limitation on Damages. Notwithstanding anything to the contrary set forth in this Agreement, City and Developer agree that the recovery by either party of any damages suffered or incurred by it as a result of any breach by the other party of any of its obligations under this Agreement shall be limited to the actual damages suffered or incurred by the non-breaching party of its obligations hereunder. In no event shall either party be liable to the other party for any consequential, exemplary, special, indirect, incidental or punitive damages (including any damages on account of lost profits or opportunities or business interruption and the like), whether by statute, in tort or under contract, under any indemnity provision or otherwise.

12.5 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.

12.6 Waiver. Any waiver by either of the Parties of any breach of any covenant herein contained to be kept and performed by the other party shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent the damaged party from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

13. Dispute Resolution. The Parties shall use good faith efforts to resolve all claims, disputes and other matters in question between the Parties arising out of or relating to this Agreement (each a "Matter in Dispute") using the procedures set forth herein.

13.1 Senior Management. If a Matter in Dispute arises, the aggrieved party shall promptly notify the other party to this Agreement in writing of the dispute, but in any event within fifteen (15) days after the dispute arises. If the Parties shall have failed to resolve the Matter in Dispute within fifteen (15) days after delivery of such notice, each party shall nominate a senior administrator or manager within its organization with authority to bind such party to meet at a mutually agreed location to attempt to resolve the Matter in Dispute. Should the senior officers be unable to resolve the Matter in Dispute within fifteen (15) days of their nomination, the Parties shall submit the Matter in Dispute to Mediation as provided as a condition precedent to pursuing other alternative dispute procedures or litigation.

13.2 Mediation. If prior to completion of construction of the Project a Matter of Dispute arises between City and Developer, the Parties shall proceed in good faith to resolve such dispute as expeditiously as possible and shall cooperate so that the progress of design and construction of the Project is not delayed. If, however, the Parties are unable to resolve the dispute, they agree to utilize the mediation process contained herein, which will be nonbinding but a condition precedent to having said dispute decided in court by a judge or jury; provided, however, that the City and Developer may agree in writing to waive this condition.

13.2.1 Mediation Process. City or Developer, by delivering written notice to the other, may refer any dispute described above to any natural person not employed by either City or Developer or an affiliate of either who shall be approved by mutual agreement of City and Developer ("Mediator").

13.2.2 Consideration of Disputes or Claims. Upon receipt by the Mediator of written notice of a dispute, either from City or Developer, the Mediator shall convene a hearing to review and consider the dispute. Both City and Developer

shall be given the opportunity to present their evidence at this hearing. Both City and Developer are encouraged to provide exhibits, calculations and other pertinent material to the Mediator for review prior to the hearing.

13.2.3 Procedures. Upon the first referral to the Mediator of a Matter in Dispute hereunder, the Mediator shall, with the agreement of the Parties, establish procedures for the conduct of any hearings for consideration of disputes and claims. The conduct of the Mediator's business shall, in general, be based on this Agreement. Unless the City and Developer agree otherwise, the Mediator shall issue its recommendation as soon as possible but in any event not later than sixty (60) days following referral of the dispute to the Mediator.

13.2.4 Independence of Mediator. It is expressly understood that the Mediator is to act impartially and independently in the consideration of facts and conditions surrounding any dispute presented by City and Developer, and that the recommendations concerning any such dispute are advisory only. The Mediator's recommendations shall be based on the pertinent Agreement provisions, and the facts and circumstances involved in the dispute. The recommendations shall be furnished in writing to the Parties.

13.2.5 City's Responsibility. City shall furnish the Mediator one copy of all documents it might have, other than those furnished by the Developer, which are pertinent to the performance of the Mediator.

13.2.6 Developer Responsibility. Developer shall furnish the Mediator one copy of all documents it might have, other than those furnished by the City, which are pertinent to the performance of the Mediator.

13.2.7 Coordination. The Parties will coordinate to effectively assist the Mediator's operation.

13.2.8 Payment. The fees charged by the Mediator shall be shared equally by the Parties. Payments shall be full compensation for work performed, services rendered, and for all materials, supplies, travel, office assistance and support and incidentals necessary to serve. Payment for services rendered by the Mediator and for the Mediator's expenses shall be at the rate or rates established by the Mediator. The Mediator may submit invoices for payment for work completed not more often than once per month during the progress of the work. Such invoices shall be in a format approved by both Parties, and accompanied by a general description of activities performed during that period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the Mediator. The invoiced amount shall be divided in half and clearly stated. A copy is to be sent to City and Developer for payment. Satisfactorily submitted invoices shall be paid within sixty (60) days.

13.3 Litigation. Only after the mediation has concluded, may either party seek resolution of the Matter in Dispute through litigation and for any such litigation, jurisdiction and venue shall thereafter be in the Superior Court of the State of Washington for Pierce County.

14. Miscellaneous.

14.1 Assignment. Developer shall not voluntarily or involuntarily sell, transfer, convey, assign or otherwise dispose of its rights under this Agreement, in whole or in part to any entity in which Developer or its principles does not possess majority control, without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed. City acknowledges that Developer may assign its rights under this Agreement to Construction Lender solely in connection with the Agreed Financing Plan for the Project.

14.2 Burden and Benefit. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and permitted assigns of the respective Parties hereto.

14.3 Neutral Authorship. In connection with the execution and delivery hereof, each party has been represented by counsel. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both Parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

14.4 Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine and neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

14.5 Complete Agreement; Amendment. This Agreement, together with the exhibits annexed hereto or referred to herein, is intended to be the entire agreement of the Parties with regard to the subject matter hereof and may only be amended with the written consent of both Parties.

14.6 Severability. Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

14.7 Relationship of Parties. Developer and City shall not be construed as joint venturers or general partners, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Developer shall have no right or

authority, express or implied, to commit or otherwise obligate City in any manner whatsoever except to the extent specifically provided herein or specifically authorized in writing by City.

14.8 No Third Party Rights. The provisions of this Agreement are intended solely for the benefit of, and may only be enforced by, the Parties hereto and their respective successors and permitted assigns. None of the rights or obligations of the Parties herein set forth (or implied) is intended to confer any claim, cause of action, remedy, defense, legal justification, indemnity, contribution claim, set-off, or other right whatsoever upon or otherwise inure to the benefit of any contractor, architect, subcontractor, worker, supplier, mechanic, insurer, surety, guest, member of the public, or other third parties having dealings with either of the Parties hereto or involved, in any manner, in the Project.

14.9 Representatives.

14.9.1 Representatives of Developer. Developer shall designate a Project Manager for the Project who shall be the single point of contact for the City on all matters arising under this Agreement and shall promptly render decisions to avoid delay in the orderly process of design and construction of the City Infrastructure Improvements and the Project. The Developer's Project Manager may be changed from time to time.

14.9.2 Representatives of City. The City Representative shall designate a Project Manager for the City Infrastructure Improvements and the Project who shall be the single point of contact for the Developer on all matters arising under this Agreement and shall promptly render decisions to avoid delay in the orderly process of design and construction of the City Infrastructure Improvements and Project. The City's Project Manager may be changed from time to time.

14.10 Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either party hereto by the other party, shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal service, three (3) days after it is deposited in the United States mail, first-class postage prepaid, certified or registered, return receipt requested, addressed as follows, or sent via facsimile transmission to the fax numbers set forth below, with machine confirmation of receipt followed by a "hard copy" mailed regular mail, within one (1) business day to the addresses listed as follows:

City:	City of University Place 3715 Bridgeport Way University Place, WA 98466
Attention:	City Manager

Facsimile: 253.460.2546
Developer: SEB, Incorporated
240 S. Stadium Way
Tacoma, WA 98402
Attention: Steve Berg
Facsimile: 253.428.8172

Either party may change its address for the purposes of this Section by giving written notice of such change to the other party in the manner provided in this Section.

14.11 Non Waiver of Governmental Rights. Nothing contained in this Agreement shall require the City to take any discretionary action relating to development of the improvements to be constructed on the Property as part of the Project, including, but not limited to, zoning and land use decisions, permitting, or any other governmental approvals.

14.12 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.

14.13 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.

14.14 Further Assurance. Each party hereto agrees that it will execute or furnish such documents and further assurances to the other or to proper authorities as may be necessary for the full implementation and consummation of this Agreement and the transactions contemplated hereby.

14.15 Authority. Each of the persons signing below represent and warrant that they have the requisite authority to bind the party on whose behalf they are signing.

14.16 Time is of the Essence. Time is of the essence of this Agreement. 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 such holiday, the period shall be extended to the next business day.

14.17 Independent Contractor. Developer is acting under this Agreement as an independent contractor and nothing herein contained, or any acts of Developer or City, nor any other circumstances, shall be construed to establish Developer as an agent of City. Developer shall be responsible for each of Developer's employees or other persons performing services to be performed by Developer hereunder and for determining the manner and time of performance of all acts to be performed by Developer hereunder.

14.18 Attorneys' Fees. Except as otherwise expressly provided herein, the prevailing party shall be responsible for payment of the reasonable legal fees of both Parties' counsel in the event of any litigation, arbitration or other proceeding brought to enforce or interpret or otherwise arising out of this Agreement.

14.19 Survival of Provisions. Except as otherwise expressly provided herein, the covenants, representations, agreements, terms and provisions contained herein shall survive and shall not be deemed to have merged with or into the Deed.

14.20 Exhibits. The Exhibits hereto are made a part of and incorporated into this Agreement.

14.21 Conflicts of Interests. No member, official or employee of the City shall make any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

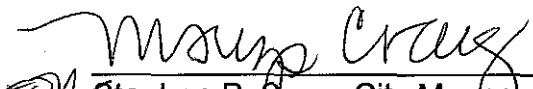
14.22 Non-Liability of City, Officials, Employees, and Agents. No member, official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

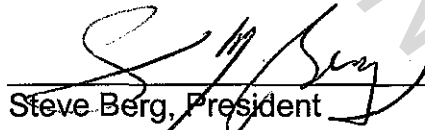
14.23 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington, without regard to principles of conflicts of laws, and venue of any action brought to enforce this Agreement shall lie exclusively in Pierce County, Washington. Jurisdiction shall lie with the Superior Court of the State of Washington. The Parties hereto consent to the jurisdiction of the Pierce County Superior Court and waive the right to file suit elsewhere.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

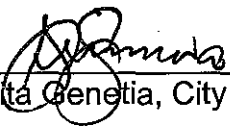
CITY OF UNIVERSITY PLACE

SEB, INCORPORATED


FOR Stephen P. Sugg, City Manager


Steve Berg, President

Attest:


Emelita Genetia, City Clerk

Approved as to form:

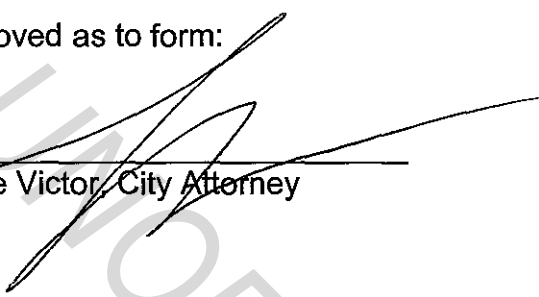

Steve Victor, City Attorney

EXHIBIT "A"

Definitions

The following terms within the Agreement are defined as follows:

"Council" means the University Place City Council.

"CC&Rs" means that certain Declarations of Covenants, Conditions & Restrictions dated _____, and recorded against the Property in the Official Records of Pierce County, Washington.

"Certificate of Completion" means a certificate issued by City to Developer pursuant to Section 5 Development of this Agreement.

"City Representative" means the City Manager of University Place or designee upon reasonable approval of Developer. Upon approval of this Agreement by the City Council, the City Representative for this Agreement shall be the City Manager and every reference to the City herein including but not limited to decisions of the City or actions to be taken at the discretion of the City shall mean a decision of the City Manager or at the discretion of the City Manager.

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

"Environmental Standards" means all federal, state and local environmental laws and ordinances and all regulations promulgated thereunder, whether currently in effect or enacted or amended from time to time in the future

"Event(s) of Default" shall be as defined in Section 12 herein.

"Final Completion" means that each of the following items shall have occurred with respect to the Project:

- a. The City has issued all final unconditional certificates of occupancy for the Project.
- b. Each contractor shall have issued its "Certificate of Substantial Completion" together with its Affidavit of Payment of Debts and Claims, AIA Forms 706 and 706A together with final waivers and releases of lien from such materialmen, laborers, contractors and subcontractors.

- c. Architect shall have issued its Certificate of Final Completion and confirmed in writing that all Punch List items have been completed and that the Project is otherwise complete.
- d. The general contractor shall have issued a certificate that its scope of work for the Project has been finally completed in substantial accordance with the Construction Documents.

"Unavoidable Delay" (out of order alphabetically) means subject to the exclusions in subsection 2 of this definition, and as more specifically defined below, any act, event or condition that is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement, and that directly affects the performance of this Agreement, by materially expanding the scope of the obligations of either party hereunder, materially interfering with, or materially delaying the performance of the obligations of either party hereunder, to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Agreement on the part of such party.

- a. Inclusions. Subject to the foregoing, Unavoidable Delay may include, but is not limited to, the following:
 - i. A change in law, except as otherwise provided in this Agreement;
 - ii. Naturally occurring events (except weather conditions reasonably anticipated for the City) occurring within a fifty (50)-mile radius of University Place and directly affecting the performance of this Agreement, such as landslides, underground movement, earthquakes, fires, tornadoes, floods, lightning, epidemics and other acts of God;
 - iii. Explosion, terrorism, sabotage or similar occurrence, war, blockade or insurrection, riot or civil disturbance occurring in the state of Washington and directly affecting the performance of obligations under this Agreement;
 - iv. The failure of any subcontractor (other than the Developer or any affiliate) to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Unavoidable Delay event if it affected the Developer directly, and the Developer is not able after exercising all reasonable efforts to timely obtain substitutes;
 - v. The preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public

emergency or any condemnation or other taking by eminent domain of any material portion of the Property;

- vi. A violation of Applicable Law by a person other than the affected party or its subcontractors.

b. Exclusions. It is specifically understood that, without limitation, none of the following acts, events or circumstances shall constitute Unavoidable Delay:

- i. Any act, event or circumstance that would not have occurred but for the affected party's failure to comply with its obligations hereunder;
- ii. Changes in economic conditions, including, but not limited to, changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices, currency values, exchange rates;
- iii. Changes in the financial condition of the Developer, or its affiliates or subcontractors affecting the ability to perform their respective obligations under this Agreement;
- iv. The consequences of error, neglect or omissions by the Developer, any subcontractor, any of their affiliates or any other person in performing its obligations under this Agreement;
- v. Union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed by the Developer or otherwise increasing the cost to the Developer of performing its obligations under this Agreement;
- vi. Weather conditions reasonably anticipated for the City of University Place, Washington;
- vii. Any act, event, circumstance or Change in Law occurring outside of the United States;
- viii. Mechanical failure of equipment used or supplied by a Party to the extent not resulting from a condition that is listed in the "Inclusions" section of this definition;
- ix. Labor disputes involving employees of the Developer, its Affiliates, or its Subcontractors;
- x. Failure of the City in its governmental capacity to approve any design submittals due to its sole judgment that such submittal does not comply with the standard against which it is required to undertake the review;
- xi. Failure of any Party to secure intellectual property rights which are or may be necessary for the performance of its obligations under the Agreement.
- xii. The inability of any Party to secure financing.

"Improvements" means all buildings, structures, improvements and fixtures placed or constructed in, under or upon the Property and all access ways, pedestrian areas, public amenities, fences, paved areas, utility distribution facilities, lighting, signage and other infrastructure improvements to be built by Developer on the Property.

"Mortgagee" means the holder of a first mortgage or deed of trust ("Mortgage") encumbering Developer's interest in any portion of the Property, the proceeds of which are used to finance or refinance the construction of Improvements.

"Permitted Exceptions" means exceptions to title identified in the Title Policy approved or not disapproved by Developer within the time period set forth in this Agreement.

"Project" means the development of the Property, including construction of all Improvements and all related obligations of Developer under this Agreement, but excluding the construction of any site improvements that are specifically identified as an obligation of the City in this Agreement.

"Property" means the real property located within Lot 8 of the University Place Town Center Property in University Place, Washington more particularly described as a Unit of the University Place Town Center Lot 8 Condominium.

"ROFO Project" means the development rights above Lot 10 of the Town Center Property.

"Substantial Completion" or "substantially complete" means the date on which all of the following have occurred: (i) the Improvements required to be developed by this Agreement are complete according to approved Plans, except for punchlist items that do not substantially prevent the use of the Improvements for their intended purposes; and (ii) the City Representative has issued a temporary or final certificate of occupancy for the building portions of the Improvements.

EXHIBIT "B"

Form of Certification of Completion

After recording return to

CERTIFICATE OF COMPLETION

GRANTOR: CITY OF UNIVERSITY PLACE

GRANTEE: SEB INCORPORATED

Legal Description

Assessor's Tax Parcel No(s):

Related Document: Development Agreement (Doc. No. _____)

The City of University Place, a Washington municipal corporation, acting in its proprietary capacity ("the City"), hereby certifies that SEB Incorporated, a Washington corporation ("Developer"), has satisfactorily completed construction of the Project on the Property described above (the "Property"), as such Project is described in the Purchase, Development and Right of First Offer Agreement dated September ____, 2011 (the "Agreement"), which was recorded in the Records of the Pierce County Auditor, Washington, as Document No. _____, on _____, 2011.

This Certificate of Completion is and shall be a conclusive determination that the Developer has satisfied, or the City has waived, each of the agreements, covenants and conditions contained in the Agreement as to the construction of the Project.

Notwithstanding this Certificate of Completion, the Agreement includes certain covenants between the City and Developer that survive and continue after issuance of a Certificate of Completion, including the representations in Section 4 and the covenant to maintain market rate apartments for the life of the Project in Section 2, and nothing in this Certificate of Completion affects such survival.

The Agreement is hereby terminated to the extent it is an encumbrance on the Property.

IN WITNESS WHEREOF, the City has caused this instrument to be executed this ____ day of _____, ____.

CITY OF UNIVERSITY PLACE

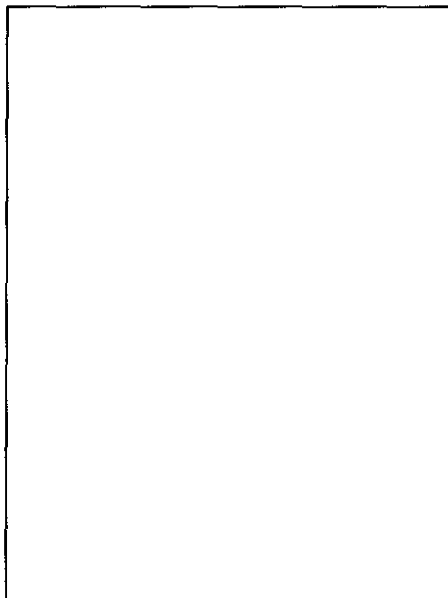
By

Stephen P. Sugg, City Manager

STATE OF WASHINGTON)) ss.
COUNTY OF PIERCE)

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

Dated: _____, ____.



(Use this space for notary seal)

Notary Public

Print/Type Name _____

My commission expires _____

EXHIBIT "C"

Lot 8 City Improvements

1. Fire sprinkler system.
2. Enclosure of the West end of structure.
3. Completion of ventilation and other mechanical systems.
4. Construction of garage stairs.
5. Striping of stalls.
6. Garage signage.

EXHIBIT "D"

Form of Condominium Declaration

UNOFFICIAL DOCUMENT

SEB, Incorporated, Agreement

-39-