

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Resolution No. 266 authorizing a City Hall/Civic Center Development Agreement with OPUS Northwest LLC, and Associated Leases
DEPARTMENT:	City Manager's Office
PRESENTED BY:	Robert L. Olander, City Manager Jesus Sanchez, Civic Center Project Manager

In July 2007, the Council authorized the City Manager to enter into a Predevelopment Agreement with OPUS Northwest, L.L.C. (Developer) for the design of the Civic Center Project.

The Predevelopment Agreement authorized Opus to proceed with certain predevelopment activities required for the Civic Center Project to meet the project development schedule. Predevelopment activities for the Civic Center included four community public workshops on March 20, July 30, August 21, and October 25 inviting public comment and participation in each phase of the building design framework to include functional layout; massing and composition; materials; features; sustainability; architectural strategies; full schematics and design concepts with landscape renderings; and design options associated with alternate costs. Opus has also conducted meetings with city staff and made presentations before Council to review various site, building design, and sustainability options.

On November 5, 2007, staff presented to Council three design options for the Civic Center Building with associated cost projections. Design Option I was considered as the base option with a footprint of 77,000 sq. ft. Design Option II was similar in design, but was designed with a higher level of architectural detail and a footprint of 70,000 sq. ft. Design Option III had yet a higher level of design detail, more glass features, and a footprint of 77, 000 sq. ft. Design Option III was highly supported by the community in the feedback we received at the community public forums. Council was generally agreeable to proceed with Design Option III, requesting that a final design and associated costs be brought back to Council for final review and approval.

30% design development of the building meeting the space requirements and design parameters of the City, has now been completed. Design documents have been delivered to the City (architectural drawings, structural drawings, mechanical-HVAC drawings, plumbing drawings, fire protection drawings, fire alarm drawings, electrical drawings, landscape & irrigation/hardscape drawings, civic drawings and other drawings as required). A master schedule has been developed through construction identifying each milestone on the schedule.

The Predevelopment Agreement has now been completed and through a collaborative effort, the City of Shoreline and the Developer have negotiated a lease/leaseback development agreement (Development Agreement) for the Civic Center Project which includes a "guaranteed maximum price" and a detailed budget. The Development Agreement for the new Shoreline Civic Center is now being presented to Council for approval. Staff has analyzed and assessed the value and cost benefits of Certificates of Participation (COP) or 63/20 financing options for tax exempt financing. Each method was evaluated for minimizing risk to the City, inclusion of inherent cost controls, and minimizing financing costs. The proposed Development Agreement proposes a Certificates of Participation financing.

FINANCIAL IMPACT:

Staff is recommending that Council authorize a total project budget of \$30.55 million for the City Hall building. This would include all costs related to the building including construction, developer costs, construction financing, contingencies, and furnishings. The current CIP had a cost of \$19.3 million. The change in project cost is primarily related to the desire to include a parking garage instead of on-grade parking, the increased size in building, and increased civic design elements. To fund the total project staff has currently identified \$9.5 million in cash and anticipates issuing up to \$21.5 million in debt (to net \$21.05 for the project). The debt will be repaid over a period of 30 years. Staff is continuing to look for opportunities to allocate more cash towards the project to reduce the amount of debt that will need to be issued, but at this time our financial assumptions assume the previous funding scenario.

The annual occupational costs (debt service, operations & maintenance), net of anticipated lease revenues, are projected to average \$1.630 million for years 2010 through 2013, \$375,000 greater than was previously estimated. In large part, this is attributable to changes in the project scope initiated, authorized, or approved by the City Council, such as additional land acquisition, a parking garage, additional building space, added landscaping and environmental features. Staff recommends that Council increase the authorized annual allocation of Real Estate Excise Tax towards the debt service of City Hall from \$400,000 annually to \$775,000. The six year CIP projects annual REET at approximately \$900,000 annually. The remaining \$854,000 in occupational costs will be funded with the monies currently allocated for lease payments and facility maintenance within the General Fund.

If additional cash is identified to allocate towards the project or if the actual project costs are less than the projected \$30.55 million then the level of debt issued will be reduced, thus reducing the annual debt service payments and the amount of REET allocated towards the repayment.

The Development Agreement includes a "Lease Transfer Amount". The Lease Transfer Amount differs slightly from the total project budget because it does not include financing related costs, owner's contingency, or the furnishings and fixtures allowance. These costs are estimated at \$2.55 million. Based on a project budget of \$30.55 million and deducting the estimated financing related costs of \$2.55 million we arrive at a Lease Transfer Amount of \$28 million. The financing costs are estimated at this time based on assumed construction draw down schedules and estimated construction loan

interest rates. The development agreement does not require that the developer assume risk related to possible changes in the financing costs as changes in the interest rate market, which could go up or down, are beyond the control of the developer. This is the reason why these costs are not included in the Lease Transfer within the development agreement.

RECOMMENDATION

Staff recommends that Council pass Resolution No. 266 authorizing the City Manager to enter into a Ground Lease, Building Lease and Development Agreement with Opus Northwest, L.L.C. for the construction of the new Shoreline Civic Center Building with a "lease transfer amount" of \$28 million; and authorizing the City Manager to incur other expenses up to \$2.55 million to finance this development cost and complete the project.

Approved By: City Manager ____ City Attorney ____

INTRODUCTION

The Predevelopment Agreement between the City of Shoreline and OPUS Northwest, L.L.C. has now been satisfied and through a collaborative effort, the City of Shoreline and the Developer have now agreed to a lease/leaseback development agreement for the Civic Center Project at a “guaranteed maximum price” or Lease Transfer Payment. This negotiation and 30% design are the final tasks under the Predevelopment Agreement.

The Lease/Leaseback Development Agreement at the “Guaranteed Maximum Price” for the construction of the new Shoreline Civic Center Building is now being presented to Council for approval. We are also seeking Council authorization for the City Manager to pursue Certificates of Participation as the financing approach that will give the City optimal value.

BACKGROUND

Council approval for the Civic Center Project began with the acquisition of the Highland Plaza property and the Kimm property in 2006. In January 2007, authorization was given to move forward with a design-build, build-to-suite/lease-to-own delivery method to develop the Civic Center and OPUS Northwest, L.L.C. was selected through the RFQ and RFP processes as the developer of the project in June 2007. A Predevelopment Agreement was executed with OPUS in July 2007.

In September 2007, the Council adopted Civic Center/City Hall Guiding Principles to provide direction for the Civic Center Project design, with a strong emphasis on securing the corner of N. 175th and Midvale Ave. North as the prominent location of the civic center with a city hall, council chambers and a two-story structure parking garage. Total floor area was to be planned to accommodate future growth. Option III was authorization for 30% design in November 2007. These milestones all represent the significant support and direction Council has provided throughout the Civic Center Project process.

The proposed final Development Agreement is an important milestone of the Project and culminates years of effort.

DISCUSSION

DEVELOPMENT AGREEMENT: State law allows the City to have a building erected on land owned by the City through the lease of the land with a leaseback of the building for the same term (RCW ch. 35.42). This leaseback must include terms that do not allow the cost of construction of the building to become an obligation of the city, provide the city with the right to occupy upon payment of rent not exceeding prevailing rates, the right to lease unneeded portions to tenants approved by the city and the right to own the building upon termination of the lease.

The proposed Development Agreement with OPUS Northwest, L.L.C. is a 45 page document with nine attachments. The agreement is available in the Council Office and has been assigned Clerk's Receiving # 4617 for reference. The key terms are summarized here.

- Ground Lease. The proposed development approach under RCW ch 35.42 calls for the City to execute a thirty- year Ground Lease of most of the property acquired for the civic center for the sole purpose of demolishing existing structures and designing and constructing the new civic center according to the 30% design plans. Some land and offices in the southeast corner of the City property that will not be used for the civic center are excluded from the ground lease. The Ground Lease is attached to Resolution No. 266 (Attachment A, Exhibit A).
- Building Lease. The Development Agreement calls for a lease back of the completed center to the City for the same 30-year term as the Ground Lease. This Building Lease includes an exclusive irrevocable option to purchase the civic center (and remaining term of the Ground Lease) for the total construction cost less a credit for principal components of lease payments made during the lease. The lease is terminable by prepayment of the principal component of the remaining lease payments. The City assumes all responsibility for operation and maintenance except for rights under the two-year construction warranties. Upon completion of the project Opus will transfer its rights as lessor to a trustee for payment of a guaranteed maximum lease transfer amount negotiated at \$28 million. Opus warrants completion of the civic center by June 30, 2009. The form of the Building Lease is attached to the Development Agreement.
- Development Agreement. The Development Agreement requires OPUS to guarantee delivery of the civic center project for the lease transfer amount. This amount includes all design services, permits, project management, developer fees, developer overhead, construction costs, a project contingency and a tenant improvement allowance not to exceed \$28 million. Project costs exceeding the transfer amount shall be paid by Opus. The Development Agreement provides an incentive to Opus for cost savings equal to one third of the final contingency balance not to exceed \$200,000.

Financial Impact

Staff is recommending that Council authorize a total project cost of \$30.55 million for the City Hall building. This cost includes estimated financing costs, owner's contingency, and furnishings and fixtures of \$2.55 million, and therefore the gross maximum price (GMP) staff is recommending that Council authorize within the development agreement be \$28 million. The majority of the \$2.55 million represents the construction and other financing costs. At this level of funding the project includes a building with 67,000 square feet, parking garage, and some enhanced civic design elements for the building and landscaping. Staff will continue to work with OPUS to finalize the design of the project, which may result in some modifications, but the cost of the building could not exceed the GMP but, could ultimately be lower. Based on these assumptions staff is assuming that the City would lease approximately 4,000 square feet of space.

The annual City Hall occupational costs (debt service, operations & maintenance), net of anticipated lease revenues, are projected to average \$1.630 million for years 2010 through 2013, approximately \$375,000 greater than was previously estimated. In large part, this is attributable to changes in the project scope initiated, authorized, or approved by the City Council, such as additional land acquisition, a parking garage, additional building space added landscaping and environmental features.

The Council has the following options available to address the difference in annual costs:

- Reduce the overall project budget and in turn the "Gross Maximum Price": The City Council could choose to reduce the GMP to a lower number than \$28 million. This could require elimination of the parking garage, a smaller building, or reduced civic design, all of which the Council has stated that they desire. Staff is continuing to work with OPUS to refine the design and evaluate the cost of the building. There is a possibility that the final cost will be less than the projected \$28 million, but staff does not anticipate that it will be significantly lower without the elimination of one of these elements.
- Increase the amount of cash allocated towards the project to reduce the long-term debt service payments: Staff has identified \$9.5 million in cash to allocate towards the City Hall building. At this time Staff is continuing to look for opportunities to increase the cash allocation, but at this time has not identified specific sources. Once we close the books for 2007 we will see if there are additional savings from the current year budget that could be allocated. Also as certain contracts are finalized for 2008 we may have an opportunity to have one-time savings that can be allocated towards City Hall.
- Reduce the amount of the general fund transfer made to the Roads Capital Fund annually. Currently this transfer is made as part of the Council's policy on gambling tax collections that are in excess to a 7% tax rate. In 2008 the amount budgeted to be transferred is \$637,500. These funds are currently used to help provide funding for the City's pavement management program. In 2007 the State Legislature approved an optional funding source, a \$20 per vehicle license fee that can be adopted to use for transportation/road improvements. If this revenue source were implemented staff projects that it would generate approximately

\$600,000 annually that could be used to back-fill a reduction to the general fund transfer.

- Council could increase the annual amount of Real Estate Excise Tax (REET) allocated towards the annual debt service payments for City Hall. Council has authorized the allocation of \$400,000 annually for this purpose starting in 2009. The adopted 2008-2013 CIP includes this allocation. Annual REET collections are estimated at approximately \$900,000, therefore, there is still \$500,000 that is programmed for future park and facility projects. Council could authorize an increase in the annual amount allocated for City Hall debt service to cover the additional \$375,000 in projected annual cost. This option does not affect transportation/road related projects.

Staff recommends that the Council authorize an increase in the allocation of REET to \$775,000 in order to meet the anticipated financing needs to complete the City Hall project. As staff finalizes the design and cost of the project the actual annual occupational costs (debt service, operations & maintenance) will be determined. If the project costs are lower than \$30.55 million, then the annual occupational costs are anticipated to be lower and the amount of additional REET may be less than is currently projected.

RECOMMENDATION

Staff recommends that Council pass Resolution No. 266 authorizing the City Manager to enter into a Ground Lease, Building Lease and Development Agreement with Opus Northwest, L.L.C. for the construction of the new Shoreline Civic Center Building with a "lease transfer amount" of \$28 million; and authorizing the City Manager to incur other expenses up to \$2.55 million to finance this development cost and complete the project.

ATTACHMENTS

- Attachment A – Proposed Resolution 266
- Exhibit A- Ground Lease
- Exhibit B- Development Agreement

RESOLUTION NO. 266**A RESOLUTION OF THE CITY OF SHORELINE, WASHINGTON,
AUTHORIZING A GROUND LEASE, BUILDING LEASE AND
DEVELOPMENT AGREEMENT WITH OPUS NORTHWEST LLC FOR
CONSTRUCTION OF THE SHORELINE CIVIC CENTER AT N 175TH AND
MIDVALE AVE N. AND AUTHORIZING FINANCING EXPENSES FOR
DEVELOPMENT COSTS**

WHEREAS, the City entered into a Predevelopment Agreement with OPUS Northwest, LLC for preliminary design of the City's Civil Center; and

WHEREAS, a series of community workshops, and meetings with staff and the City Council has brought the project to a 30% design concept; and

WHEREAS, City staff has negotiated a maximum guaranteed price and delivery date with OPUS Northwest as part of a Development Agreement to complete final design and construct the Civic Center; and

WHEREAS, the Development Agreement anticipates a ground lease and lease back of the completed project subject to an option for the City to purchase the civil center facilities at any time during the lease; now therefore

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
SHORELINE, WASHINGTON AS FOLLOWS:**

Section 1. Ground Lease Authorized. The City Manager is authorized to execute the Ground Lease with Opus Northwest, LLC attached hereto as Exhibit A, for a apportion of City property at 1110 N. 175th Shoreline, WA for the purpose of constructing the Shoreline Civic Center.

Section 2. Development Agreement Authorized. The City Manager is authorized to execute the Shoreline Civic Center Development Agreement, and the Building Lease attached thereto, filed under Clerk's Receiving No. 4617, with Opus Northwest, LLC for the construction and lease of the Shoreline Civic Center to the City of Shoreline for its governmental offices and operations. Building Lease payments are authorized in an amount sufficient to amortize the actual Lease Transfer Amount of the Development Agreement and finance expenses authorized in Section 3 together with interest on these amounts not to exceed 5%.

Section 3. Financing Authorized. The City Manager is authorized to enter into contracts for consultant, underwriting, legal and other fees necessary to acquire financing for the total development costs of the Shoreline Civic Center up to an aggregate total of \$1.9 million. Actual financing costs, together with development costs, shall be amortized through lease payment under the Building Lease.

ADOPTED BY THE CITY COUNCIL ON DECEMBER 17, 2007.

Mayor Robert L. Ransom

ATTEST:

Scott Passey
City Clerk

BUILDING GROUND LEASE AGREEMENT

THIS BUILDING GROUND LEASE AGREEMENT ("Building Ground Lease") is made as of , 200 , b y and between **CITY OF SHORELINE**, a municipal corporation of the State of Washington ("Lessor"), and **OPUS NORTHWEST, LLC**, a Washington Limited Liability Company ("Lessee").

RECITALS

A. Lessor is the owner of the real estate described on **EXHIBIT A** attached hereto ("Building Land") located in Shoreline, King County, Washington.

B. Lessor intends to lease the Building Land to Lessee pursuant to this Building Ground Lease, and Lessee intends to construct and equip thereon a first-class office building to serve as government offices for Shoreline containing approximately 70,000 square feet of rentable area as more fully described in the Preliminary Plans and Specifications, including all HVAC, electrical and other building systems, Tenant Improvements and any parking included in the 30% Preliminary Plans and Outline Specifications ("Building" or "Project"). The design and construction of the Building shall be as more particularly described in that certain Project Lease Agreement between the parties ("Project Lease").

C. Lessee intends to lease the Premises, including the Building, back to Lessor in accordance with the Municipal Leasing Act, RCW ch. 35.42, and pursuant to the Project Lease.

D. All capitalized terms used in this Building Ground Lease but not otherwise defined herein (including these Recitals hereto) shall have the meanings given to such terms in the Project Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. The Demise.

1.1 **Demise.** In consideration of the rents, covenants and agreements contained in this Building Ground Lease, Lessor hereby leases the Building Land to Lessee, and Lessee hereby leases the Building Land from Lessor upon and subject to the conditions set forth in this Building Ground Lease, and subject to all encumbrances and matters of record as of the date of this Building Ground Lease.

1.2 **Use of the Building Land.** The Building Land shall be used and occupied only for the purpose of the development, operation, use, repair and maintenance of the Building. Until Lessee commences such use, Lessor reserves the right to continue to use and occupy the Building Land for its purposes at no cost. Lessee shall not use or permit the Building Land to be used for any other purpose without the prior written approval of Lessor. Lessee is hereby authorized to lease back to Lessor the Building Land as improved by the Project pursuant to the Project Lease.

1.3 Access and Utilities. Lessor and Lessee agree to mutually cooperate regarding the provision of reciprocal temporary and permanent pedestrian and vehicular access and utilities to, from, and over the Building Land to, from, and over adjacent lands of Lessor. Lessor and Lessee further agree to mutually cooperate regarding the use of parking on the Building Land and the adjacent lands of Lessor during and after construction of the Project. Lessor and Lessee agree to execute such instruments as may be necessary to provide for such pedestrian and vehicular access, parking and utilities and agree to cooperate in the location thereof.

1.4 Construction Activity. Lessor hereby grants permission to Lessee to perform construction activity related to the Project on adjacent lands of Lessor. Lessee and Lessor agree to mutually cooperate as to the timing, use, and location of such construction activity in order to ensure completion of the Project in a timely manner while maintaining Lessor's ability to utilize the adjacent lands for Lessor's ongoing operations and that of its Lessees of adjacent lands.

2. Term.

2.1 Commencement. Subject to the terms and conditions of this Building Ground Lease, the term of this Building Ground Lease shall commence on the date that this Building Ground Lease is fully executed, acknowledged and delivered by Lessor and Lessee and Substantial Completion of the Project in accordance with the Project Lease has occurred ("Effective Date").

2.2 Duration. The term of this Building Ground Lease shall be thirty-five years from the Effective Date unless sooner terminated hereunder ("Term").

3. Rent. Lessee shall pay to Lessor as rent for the Term the sum of \$100.00 payable in whole in advance on or before the first day of the Term.

4. Development of Project.

4.1 Construction. Lessor agrees that Lessee shall cause the Project to be constructed and developed pursuant to the Project Lease. Lessee shall not permit any development or construction on the Building Land except as contemplated by the Project Lease or as otherwise specifically approved in writing by Lessor.

4.2 Ownership of Improvements. During the Term, the Project and all other improvements on the Building Land paid for by Lessee shall be owned by Lessee. Upon the expiration or earlier termination of this Building Ground Lease, the Project and all other improvements on the Building Land shall become the property of Lessor.

5. Taxes and Utilities.

5.1 Lessee's Responsibility. Lessee shall be solely responsible for the payment of and shall pay and discharge all utility charges which are incurred as part of Project Costs as defined in the Project Lease.

5.2 Lessor's Responsibility. Lessor shall pay all utility charges that are not part of Project Costs and all real estate taxes and assessments, if any, that are imposed upon the Building Land. In accordance with RCW 35.42.090, this Building Ground Lease shall be exempt from any taxes imposed under the authority of RCW ch. 82.45, RCW 82.04.040, or RCW 82.08.090.

5.3 Lessor's Taxes. Nothing in this Building Ground Lease shall require Lessee to pay any franchise, estate, inheritance, succession, capital levy (measured on the capital stock of Lessor), income, or transfer tax of Lessor.

6. Condition of the Building Land.

6.1 Condition of the Building Land. Lessee hereby accepts the Building Land "as is" in its existing condition including, without limitation, the obligation to perform or to cause to be performed all Environmental Remediation to the extent covered by the approved Project Budget. Notwithstanding the foregoing, and except for Environmental Remediation covered by the approved Project Budget, Lessor shall be solely responsible for all claims, judgments, damages, penalties, fines, expenses, liabilities or losses relating to the presence, release or disposal of hazardous substances that were present in the soil, groundwater or soil vapor on or under the Building Land or any adjacent or nearby property as of the Effective Date of this Building Ground Lease, including any costs of investigation or remediation of such toxic or hazard substances that may be required by any federal, state or local government agency. Lessor shall not be responsible for any claims, judgments, damages, penalties, fines, expenses, liabilities or losses relating to the release or disposal of hazardous substances on the Building Land during construction of the Project and the responsibility for the same shall remain with Lessee and the Developer.

6.2 Lessor's Right to Inspect. Lessor shall have the right to inspect the Building Land at any time.

7. Liens; Security Interest.

7.1 Lessee's Duty. Except for the use of this Building Ground Lease as security for the Bonds to be issued to finance or refinance the Project or as specifically approved in writing by Lessor, Lessee will not directly or indirectly create or permit to be created or to remain, and will discharge any mortgage, lien, security interest, encumbrance or charge on, pledge of or conditional sale or other title retention agreement with respect to the Building Land, any part thereof, the Project, Lessee's interest therein, or any equipment, fixtures or personalty on the Building Land that is imposed by or as a result of the actions of Lessee.

8. Indemnity and Insurance.

8.1 Indemnity. Lessor and Lessee mutually agree that in any and all causes of action and/or claims or third-party claims arising out of or in connection with the terms, activities, use and/or operations of this Building Ground Lease, including the Building Land and the Project, each party shall be responsible to the other only to the extent of each other's comparative fault in causing the alleged damage or injuries. As to any and all causes of action

and/or claims or third-party claims arising from the sole fault of a party to this Building Ground Lease ("Indemnifying Party"), the Indemnifying Party shall have the duty to defend, save and hold the other party harmless and upon failure to do so, the Indemnifying Party shall pay the reasonable attorneys' fees, costs and expenses incurred by the other party to this Building Ground Lease in defense of such claims and/or actions. Nothing contained within this Section 8.1 shall affect and/or alter the application of any other provision contained within this Building Ground Lease.

8.2 Property Insurance. At all times during the Term of this Building Ground Lease, in the event that Lessor is not maintaining property insurance with respect to all improvements constructed on the Building Land, Lessee shall maintain property insurance fully insuring, at 100% of replacement cost value, all improvements constructed on the Building Land, as well as all of Lessor's personal property and trade fixtures located on the Building Land, against loss or damage by fire and other perils currently covered by a special causes of loss commercial property insurance form. Lessee shall also cause the Premises to be insured against the perils of earthquake and flood, either as part of the aforementioned property insurance, or under a separate policy or policies. The property insurance policy shall meet the requirements set forth in this section and in the Project Lease.

8.3 Waiver of Subrogation. Lessee shall cause its property insurance carrier(s) to release and waive all rights of subrogation against Lessor to the extent a loss is covered by property insurance in force; provided, however, that this Section 8.3 shall be inapplicable if it would have the effect of invalidating any insurance coverage of Lessee.

8.4 Minimum Scope of Insurance Coverage for Lessee.

8.4.1 Lessee's Coverages. During the Term of this Lease, Lessee shall at a minimum maintain: Commercial General Liability insurance (Insurance Services Office form number (CG00 001), covering Commercial General Liability with a limit of not less than \$1,000,000 combined single limit per occurrence; \$2,000,000 aggregate. In addition, Lessee shall maintain workers' compensation coverage as required by the Industrial Insurance Act of the State of Washington, statutory limits.

8.4.2 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in insurance coverage maintained by Lessee must be declared to and approved by Lessor. The deductible and/or self-insured retention of the policies shall not limit or apply to Lessor and shall be the sole responsibility of Lessee.

8.4.3 Other Insurance Provisions. The insurance policies required by this Building Ground Lease are also to contain or be endorsed to contain the following provisions where applicable:

(a) Liability Policies:

(1) Lessor, its officers, officials, employees and agents are to be covered as an additional insured as respects liability arising out of activities performed by or on behalf of Lessee in connection with this Lease.

(2) Lessee's insurance coverage shall be primary insurance as respects Lessor, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by Lessor its officers, officials, employees and agents shall not contribute with Lessee's insurance or benefit Lessee in any way.

(3) Lessee'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.

(b) **All Policies.** Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limits by claims paid, until after forty-five (45) days' prior written notice has been given to Lessor.

(c) **Acceptability of Insurers.** Unless otherwise approved by Lessor:

(1) Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's with a rating in one of the two highest categories maintained by Standard & Poor's Rating Group and Moody's Investors Service.

(2) If at any time any of the foregoing policies shall fail to meet the above minimum standards, Lessee shall, upon notice to that effect from Lessor, promptly obtain a new policy and shall submit the same to Lessor with certificates and endorsements for approval.

9. Eminent Domain.

9.1 **Award.** In the event of any taking, partial or whole, Lessor shall be entitled to the entire award judgment or settlement from the condemning authority for the value of the Building Land taken by the condemning authority.

10. Events of Default by Lessee and Lessor's Remedies.

10.1 **Events of Default.** The following occurrences or acts shall constitute an event of default under this Building Ground Lease:

(a) **Failure to Perform.** If Lessee shall (i) default in making payment when due of any rent or any other amount payable by Lessee hereunder; or (ii) default in the observance or performance of any other substantial provision of this Building Ground Lease to be observed or performed by Lessee hereunder; and, in either case, if such default shall continue for thirty (30) days, in each case after Lessor shall have given to Lessee notice specifying such default and demanding that the same be cured, or, with respect to a default under subsection (ii), if by reason of the nature thereof such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such period of thirty (30) days, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default and with all due diligence, it being intended in connection with a default not susceptible of being wholly cured with due diligence within such period that the time within which to cure the same

shall be extended for such period as may be necessary to complete the curing of the same with all due diligence; or

(b) **Lessee's Financial Condition.** If Lessee shall make a general assignment for the benefit of creditors, or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or shall fail seasonably to contest the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Lessee or any material part of its properties.

10.2 Remedies Upon Lessee's Default. In the event of any default by Lessee as defined hereinabove which default remains uncured after the expiration of the respective period set forth above, Lessor may exercise any remedy which may be available to Lessor at law or equity, including but not limited to actions for damages, and/or injunctive relief; provided, that, unless the Bonds have been paid in full and the Bond Insurer, if any, has consented, Lessor may not terminate this Building Ground Lease prior to the end of the Term except for Lessee's failure to pay the rent when due.

10.3 Cumulative Rights and Remedies. The rights and remedies reserved to Lessor herein, including those not specifically described, shall be cumulative, and except as provided by Washington statutory law in effect at the time, Lessor may pursue any and all such rights and remedies at the same time or independently.

10.4 No Waiver. No delay or omission of Lessor to exercise any right or remedy shall, except as expressly provided herein, be construed as a waiver of any such right or remedy or of any default by Lessee hereunder. The acceptance by Lessor of rent or any additional rent hereunder shall not be a waiver of any preceding breach or default by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent accepted, regardless of Lessor's knowledge of such preceding breach or default at the time of acceptance of such rent, or, except as expressly set forth herein, a waiver of Lessor's right to exercise any remedy available to Lessor by virtue of such breach or default.

10.5 Attorneys' Fees. If either party incurs any expenses, including but not limited to reasonable attorneys' fees, consultant and expert witness fees, in connection with any action or proceeding instituted by any party by reason of any default or alleged default of a party hereunder, the party prevailing in such action or proceeding shall be entitled to recover its reasonable expenses from the other party hereof. For purposes of this provision, in any action or proceeding instituted pertaining to the Lease, a party shall be deemed the prevailing party if (i) judgment is entered substantially in favor of said party or (ii) before trial or judgment the other party shall pay all or any portion of the charges claimed by said party, or the other party shall eliminate the condition(s), cease the act(s) or otherwise cure the omissions(s) claimed by said party to constitute a default by the other party hereunder.

11. Quiet Enjoyment.

11.1 Lessee's Occupation of the Building Land. If and so long as Lessee shall pay all rent and all other amounts payable by Lessee hereunder whenever the same shall become due and shall keep all of the covenants and conditions required by it to be kept during this Building Ground Lease and shall perform all of its other obligations hereunder, Lessor covenants and agrees that, except as may otherwise be provided in the Project Lease, Lessor will not interfere with the peaceful and quiet occupation and enjoyment of the Building Land by Lessee, which occupation and enjoyment shall be without hindrance, ejection or molestation by Lessor.

12. Lessee to Comply with Applicable Laws and Agreements.

12.1 Compliance with Laws. Lessee shall not use the Building Land or permit anything to be done in or about the Building Land which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Lessee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and obtain all permits, licenses or other approvals required by governmental agencies or bodies. Lessee shall further comply with the requirements of any board or fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Building Land.

12.2 Compliance with Agreements. Lessee shall comply with all insurance policies and applicable agreements to which Lessee is a party or by which it is bound, now or hereafter in effect, and all agreements of which Lessee has notice and which are now in effect and applicable to the Building Land.

13. Waiver Limitations.

13.1 Waiver Limitations. The waiver by either party of any term, covenant or condition herein contained on the part of the other party to be performed shall not be deemed a waiver of such term, covenant or condition for any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Building Ground Lease, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

14. Notices.

14.1 Addresses. All notices, requests, demands, instructions or other documents to be given hereunder to any party shall be in writing and shall either be personally delivered to the party at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery) or delivered by mail, sent by registered or certified mail, return receipt requested, as follows:

If to Lessor: City of Shoreline
City Clerk
17544 Midvale Ave. N.
Shoreline, WA 98133-4921

Facsimile: (206)

If to Lessee: Opus Northwest LLC
Seattle, WA 98101
Facsimile: (206)

Notices so mailed shall be deemed to have been given forty-eight (48) hours after the deposit of the same in any United States Mail post office box in the state to which the notice is addressed or seventy-two (72) hours after deposit in any such post office box other than the state to which the notice is addressed, postage prepaid, addressed as set forth above. For the purpose of this Section, addresses for notice may be changed by giving written notice of such change in the manner herein provided for giving notice.

15. Assignment and Subleasing.

15.1 Subleasing. Lessor and Lessee intend that Lessee shall enter into the Project Lease with Lessor. Any other proposed subleases of the Building Land shall be subject to the review and approval of Lessor.

15.2 Assignment. Except for the assignment to the Trustee to secure the Bonds for the Project, Lessee shall not assign, mortgage, or encumber this Building Ground Lease or delegate the duties of Lessee under this Building Ground Lease without the prior written consent of Lessor. A consent to one assignment shall not be deemed to be a consent by Lessor to any subsequent assignment by another person. This Building Ground Lease shall not, nor shall any interest of Lessee herein, be assignable by operation of law, without prior written consent of Lessor.

16. Miscellaneous.

16.1 Time of Essence. Time is of the essence in regard to performance of the covenants and agreements stated herein.

16.2 No Joint Venture or Agency. Nothing contained in this Building Ground Lease nor any of the acts of the parties hereto shall be construed nor is it the intent of the parties, to create a joint venture or partnership between Lessor and Lessee, nor is either party the agent or representative of the other, and nothing in this Building Ground Lease shall be construed to create any such agency relationship or to hold either party liable to anyone for goods delivered or services performed at the request of the other party.

16.3 Amendments. No change in or addition to or waiver or termination of this Building Ground Lease any part hereof, shall be valid unless made in writing and signed by or on behalf of the party charged therewith. Lessor and Lessee agree to negotiate in good faith

any amendments to this Building Ground Lease that may be requested or required in connection with the issuance of the Bonds to finance the Project.

16.4 Governing Law. This Building Ground Lease shall be construed in accordance with and governed by the laws of the State of Washington.

16.5 Headings. The article, section and paragraph headings herein contained are for the purposes of identification and reference convenience only and shall not be considered in construing this Building Ground Lease.

16.6 Successors and Assigns. Subject to the provisions hereof restricting the sublease or assignment by Lessee, all the terms and provisions of this Lease shall be binding upon and to the benefit of and be enforceable by the parties and the successors and assigns of the parties.

16.7 No Merger. In no event shall the leasehold interest of Lessee hereunder merge with any estate of Lessor in or to the Building Land or the leasehold interest of Lessor under the Project Lease. In the event that Lessor acquires the leasehold interest of Lessee, such leasehold interest shall not merge with Lessor's fee interest in the Building Land or the leasehold interest of Lessor under the Project Lease, and this Building Ground Lease and the Project Lease shall remain in full force and effect.

16.8 Counterparts; Recording of Memorandum. This Building Ground Lease may be executed in several counterparts, each of which shall be deemed an original for all purposes. Either Lessor or Lessee shall have the right to record a memorandum of this Building Ground Lease in a form comparable to that provided in the Project Lease and the parties shall cooperate in execution of such memorandum.

16.9 Schedule of Exhibits. This Building Ground Lease includes the following exhibits attached hereto and incorporated herein by this reference.

EXHIBIT A Building Land Legal Description

IN WITNESS WHEREOF, Lessor and Lessee have executed this Building Ground Lease as of the date set forth in the first paragraph of this Building Ground Lease to evidence their agreement to the terms of this Building Ground Lease.

DATED the date first above written.

APPROVED AS TO FORM:

LESSOR:

CITY OF SHORELINE,
a municipal corporation of the
State of Washington

By _____
Ian Sievers, City Attorney

By _____
Robert Olander, City Manager

Date: _____

LESSEE:

OPUS NORTHWEST, LLC
a Washington nonprofit corporation

By _____
Name: _____
Title: _____
Date: _____

STATE OF WASHINGTON }
COUNTY OF KING } ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that [he/she] signed this instrument, on oath stated that [he/she] was authorized to execute the instrument and acknowledged it as the _____ of **KING COUNTY**, a political subdivision of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 2005.

Printed Name _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____

STATE OF WASHINGTON }
COUNTY OF KING } ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of **OPUS NORTHWEST, LLC** A Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 2005.

Printed Name _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____

EXHIBIT A
BUILDING LAND LEGAL DESCRIPTION

Tax Parcels 031810046, 031810036, 031810055 and a portion of 031810040 consisting of approximately 2.78 acres described as :

AUTOMOBILE ADD UNREC BAAP ON NLY MGN OF N 175TH ST-50 FT NLY OF C/L OF SD ST - SD PT BEING N 89-06-00 W 377.00 FT FR W LN OF PLAT OF RONALD TERRACE TH N 00-53-00 E 100 FT TO TPOB TH N 89-06-00 W 112.35 FT TO W LN BLK 9 SD UNREC PLAT TH N 12-04-00 W 186.52 FT TO N LN S 1/2 OF S 1/2 OF SW 1/4 OF NE 1/4 STR 07-26-04 TH S 89-06-00 E 214.20 FT TH S 00-53-00 W 126.78 FT TH N 89-06-00 W 60 FT TH S 00-53-00 W 55 FT TO TPOB

AUTOMOBILE ADD UNREC E 37.18 FT OF 3 ALL 4 & W 74.82 FT OF 7 & POR OF 8-9 NLY & ELY OF LN BEG ON N OF 8 DIST 214.20 FT E OF NW COR TH S 00-53-00 W 126.78 FT TH E TO W LN OF 7 TGW E 77.18 FT OF S 88.15 FT OF 9

AUTOMOBILE ADD UNREC ALL 1-2 & 3 LESS E 37.18 FT & S 33.15 FT OF TR 9 LESS E 77.18 FT LESS CO RDS

AUTOMOBILE ADD UNREC E 225 FT LESS S 120 FT OF W 100 FT LESS CO RD

LESS the area of Tax Parcel 031810040 depicted in Exhibit A-1.



**CITY OF SHORELINE CIVIC CENTER PROPOSED FORM
DEVELOPMENT AGREEMENT**

Between

**CITY OF SHORELINE
("City")**

And

Opus Northwest, LLC

a Washington Limited Liability Company

("Developer")

Dated as of

the _____ day of _____, 2007

City of Shoreline Civic Center
Proposed Form Development Agreement

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<u>Exhibit</u>	<u>Description</u>	<u>Partial Section Reference</u>
A	Legal Description of Building Land	Recitals
B	Lease Agreement	Recitals; Section 1
C	Base Shell and Core Building	Section 1
D	Project Budget	Sections 1, 4(c)
E	Schedule of Preliminary Plans and Specifications	Section 1
F	Project Schedule	Sections 1, 6(c)
G	Tenant Improvement Plans Delivery Date Schedule	Sections 2(b), 6(c)
H	Dispute Resolution Mediation	Section 23
I	List of Additional Warranties	Section 7(h)

**CITY OF SHORELINE CIVIC CENTER PROPOSED FORM
DEVELOPMENT AGREEMENT**

THIS PROPOSED FORM DEVELOPMENT AGREEMENT (the "Agreement") dated as of the ____ day of _____, 2007 is by and between **the City of Shoreline**, a Washington municipal corporation ("City"), and **OPUS Northwest, LLC**, a Washington Limited Liability Company, ("Developer").

RECITALS

A. Developer is the lessee under that certain Building Ground Lease dated _____ (the "Building Ground Lease"), with the City of Shoreline ("City") as lessor, pursuant to which Developer leases that certain real property located in the City of Shoreline, King County, Washington (the "Building Land") more specifically described on Exhibit A hereto.

B. Developer wishes to construct on the Building Land a first-class office building to serve as government offices for the City containing approximately 70,000 square feet of rentable area as more fully described in the Preliminary Plans and Outline Specifications, including all HVAC, electrical and other building systems and Tenant Improvements pursuant to the Preliminary Plans and Outline Specifications. In addition, the Project shall include the construction of a parking garage which will contain approximately 167 parking spaces. The design and construction of the garage and the office building are together referred to in this Agreement as the "Project or Building."

C. Developer, as landlord, and the City, as tenant under that certain Lease Agreement dated as of _____ (the "Lease") whereby City has agreed to lease back the Building upon substantial completion thereof, at the rent and subject to all of the terms, covenants, and conditions set forth in the Lease, a copy of which is attached hereto as Exhibit B and by this reference incorporated herein. The Lease requires that City shall cause Developer to design, develop, construct and complete the Project.

D. City intends to provide for the payment of the Lease Transfer Amount as defined below with the proceeds of tax-exempt Certificates of Participation or by other obligations.

NOW, THEREFORE, in order to fulfill the foregoing objectives, Developer and City desire to enter into this Agreement and proceed in accordance with its terms.

1. Definitions. As used herein, the following terms shall have the following meanings:

"ADA" means the Americans With Disabilities Act of 1990, as amended from time to time.

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

"Architect" means LMN Architects, the architect for the Project selected by Developer with City's approval.

"Architect's Agreement" means the Agreement between Developer and Architect with respect to the Project.

"Base Shell and Core Building" means the Building to be constructed on the Building Land, exclusive of the Tenant Improvements. The Base Shell and Core Building is more particularly described in the attached Exhibit C.

"Bond Insurer" means an insurance company which issues a municipal bond insurance policy at the request of City in connection with the issuance of the Certificates of Participation, if any. If no Bond Insurer is selected to insure the Certificates of Participation, references to the Bond Insurer hereunder shall be deemed to be deleted.

"Building" means the first-class office building to serve as government offices for the City to be constructed on the Building Land containing approximately 70,000 square feet of rentable area and -space parking garage as more fully described in the Preliminary Plans and Outline Specifications, including all HVAC, electrical and other building systems and Tenant Improvements.

"Building Ground Lease" means the long-term ground lease entered into, or to be entered into, by Developer as the tenant and the City as landlord for the Building Land described on the attached Exhibit A.

"Building Land" means the real property located in the City of Shoreline, King County, Washington, more specifically described on Exhibit A hereto.

"Certificates of Participation" means those tax-exempt obligations caused by the City to be issued, representing undivided interests in payments under the Lease, the proceeds of which City intends to pay, among other things, the Lease Transfer Amount.

"City" or "Tenant" means the City of Shoreline, Washington.

"City's Contingency" means the contingency in the amount of \$500,000.00 which may be used to cover any changes in the Project resulting from any material improvements or deviation required by City from the design or level of quality reflected in the Preliminary Plans and Outline Specifications as set forth in Exhibit E attached or for Tenant Improvements requested by City which exceed the Tenant Improvement Allowance.

"City-Caused Delay" means any period of delay in the overall progress of design, construction, and completion of the Project, including Tenant Improvements, that is caused by City-initiated change orders to the General Construction Contracts or by City failure to approve,

disapprove, decide, or otherwise respond to Developer with respect to a particular item for which City's response is required hereunder or under the General Construction Contract, or failure to deliver plans, information, specifications, or other information within the time frames required under this Agreement or the General Construction Contracts. However, City-Caused Delay shall not include: (i) delay for which a substantially contributing cause is Developer's failure to provide, within the time frames allowed hereunder, draw requests, architect's certifications, progress completion certifications, copies of change orders and supporting documentation, shop drawings, schedules, costs, invoices, job progress reports, or other documents or information which City is entitled to receive hereunder or which is reasonably requested by City in connection with any such decision or response, or (ii) delay caused by the existence of reasonable cause to suspect that construction of the Project or Tenant Improvements or any other services provided by Developer hereunder have not been performed in accordance with Construction Documents and other requirements hereunder, in which case City-Caused Delay shall not include the amount of additional time reasonably needed by City to determine whether such construction or other services conform to all requirements hereunder, so long as City proceeds with all reasonable diligence to make such determination. To facilitate timeliness in City's communications with Developer over matters relating to design or construction of the Project and to minimize the possibility of City-Caused Delay, Developer shall alert City to deadlines for approvals, decisions or other responses that City must provide hereunder, including, among other methods, attachment of "deadline cover sheets" on any submissions to City that require response by a particular deadline or distribution of weekly calendars that show deadlines imposed on City. If Developer at any time believes that an instance of City-Caused Delay has occurred that has directly caused or will directly cause an increase in Project Costs or extension of the Developer Obligation Date, Developer shall send a written notification to City within five (5) days of the occurrence of such alleged City-Caused Delay explaining the alleged event that constituted such City-Caused Delay, specifying the period of alleged City-Caused Delay, describing how the alleged City-Caused Delay adversely impacted the Project Schedule and identifying any incremental increase in Project Costs that are identifiable or reasonably foreseeable as a direct result of such City-Caused Delay. Any disputes between Developer and City over Project Costs attributable to City-Caused Delay shall not be a reason to stop or delay construction of the Project and shall be resolved by the parties as expeditiously as possible, either by mutual agreement of the parties or in accordance with the dispute resolution mechanisms described in Section 24 hereof.

"City's Personal Property" means City's furniture, equipment, and movable personal property placed in the Premises; provided, however, that fixtures, furnishing and equipment described in the Construction Documents as being part of the Project are not deemed to be part of City's Personal Property. City shall provide City's Personal Property at City's sole cost and expense.

"Commencement of Construction" means the date City executes and delivers to Developer the Notice to Proceed.

"Construction Contracts" means all contracts for construction services entered into between Developer and any Contractor, for construction of the Project and Tenant Improvements

"Construction Documents" means the Construction Drawings and Detailed Specifications approved by the City for construction of the Project, including technical drawings, schedules, diagrams, plans and specifications setting forth in detail the requirements for construction of the Project and providing information customarily required for the use of the building trades.

"Construction Drawings" means drawings setting forth in detail the requirements for the construction of the Project. As used herein "Construction Drawings" include all graphic and pictorial documents depicting the design, location and dimensions of the elements of the Project (including Tenant Improvements) and include plans, elevations, sections, details, schedules and diagrams for the Project. Construction Drawings may consist of separate Construction Drawings for (i) the Garage and the Base Shell and Core Building prepared by Architect and (ii) the Tenant Improvements prepared by the Interior Architect.

"Contract Documents" means the Construction Contracts and the other documents identified as Contract Documents.

"Contractors" means the General Contractor and any other construction contractors with whom City enters into direct contracts upon the written recommendation of Developer or with whom the Developer on behalf of and acting as the City's agent contracts for the Project.

"Costs Not To Be Reimbursed" means, except as specifically provided in Section 11 hereof (relating to Developer's Overhead Allowance and Developer's Fee), (i) salaries or other compensation of Developer's personnel or of Contractor's personnel normally situated at the Developer's principal office, Contractor's principal office or branch offices, or for any officer of Developer or Contractor; (ii) expenses of Developer's or Contractor's principal office; (iii) overhead or general expenses; and (iv) Project Costs in excess of the Lease Transfer Amount.

"Costs Resulting From City-Caused Delay" means any increase in costs of constructing the Project resulting from City-Caused Delay.

"Detailed Specifications" means all written detailed requirements for materials, equipment, construction systems, standards and workmanship for the construction of the Project.

"Developer" means Opus Northwest, LLC, a Washington Limited Liability Company, and its permitted successors and assigns hereunder.

"Developer Obligation Date" means the date 60 days (2) months after substantial completion. The Developer Obligation Date shall be extended to the extent of (i) Unavoidable Delays; provided, however, that extensions due to Unavoidable Delays shall not exceed sixty (60) days; (ii) City-Caused Delays; and (iii) delays incurred as a result of the presence of any Hazardous Substances in, on or emanating from the Building Land as of the Effective Date of the Lease (as defined therein) in excess of the time specifically provided in the approved Project Schedule for remediation of any such Hazardous Substances.

"Developer's Fee" means the fee to be paid to Developer subject to the terms and conditions set forth in Sections 11 and 12 of this Agreement.

"Environmental Laws" means, as amended from time to time, the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., Federal Hazardous Materials Transportation Control Act, 42 U.S.C. Section 1801 et seq., Federal Clean Air Act, 42 U.S.C. Section 7401 et seq., Federal Water Pollution Control Act, Federal Water Act of 1977, 93 U.S.C. Section 1251 et seq., Federal Insecticide, Fungicide and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. Section 136 et seq., Federal Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., Federal Safe Drinking Water Act, 42 U.S.C. Section 300f et seq., Washington Water Pollution Control Act, RCW Chapter 90.48, Washington Clean Air Act, RCW Chapter 70.94, Washington Solid Waste Management Recovery and Recycling Act, RCW Chapter 70.95, Washington Hazardous Waste Management Act, RCW Chapter 70.105, Washington Hazardous Waste Fees Act, RCW Chapter 70.95E, Washington Model Toxics Control Act, RCW Chapter 70.105D, Washington Nuclear Energy and Radiation Act, RCW Chapter 70.98, Washington Radioactive Waste Storage and Transportation Act of 1980, RCW Chapter 70.99, Washington Underground Petroleum Storage Tanks Act, RCW Chapter 70.148.

"Final Acceptance" means the City's written approval and concurrence that certain events, more fully defined in Section 12 of this Agreement, have occurred prior to Final Payment being made.

"Final Payment" means payment to Developer, General Contractor and any other Contractors following Final Acceptance of the Project pursuant to Section 13 of this Agreement.

"Financing Costs" means all financing costs approved by bond counsel in connection with the issuance of the Certificates of Participation.

"General Contractor" means Opus Northwest LLC, the general contractor for the Project.

"Hazardous Substances" means any material, waste, substance, industrial waste, toxic waste, chemical contaminant, petroleum, asbestos, polychlorinated biphenyls, radioactive materials or other substances regulated or classified by Environmental Laws as hazardous, toxic or lethal to persons or property.

"Interior Architect" means LMN Architects, the interior architect for the Project selected by Developer with City's approval.

"Interior Design Contract" means the contract for space planning design services in connection with the design of Tenant Improvements entered into by Developer and the Interior Architect.

"Land" means the Building Land.

"Lease" means the Lease Agreement between Developer and the City for occupancy of the Project in the form attached hereto as Exhibit B.

"Lease Transfer Amount" means \$28 million (Not To Exceed), the total amount to be paid by City for Project Costs, excluding Other Costs, for the completion of the design, development, permitting and construction of the Project, and is the price to be paid by City for Project Costs. The Lease Transfer Amount includes the amount of the Tenant Improvement Allowance but does not include Other Costs. A detailed description of Project Costs by line item and category is set forth in the Project Budget.

"Leasing Date" means a business day designated by the Developer, which shall be no earlier than sixty (60) days following Substantial Completion of the Project, and no later than four hundred (400) days following Substantial Completion of the Project.

"Laws" means any constitution, statute, ordinance, regulation, rule, resolution, judicial decision, administrative order or other requirement of any federal, state, City, municipal or other governmental agency or authority having jurisdiction over the parties or the Premises, including without limitation, any regulation or order of a quasi-official entity or body and all rules, laws and regulations issued thereunder, as the same may be amended from time to time.

"Other Costs" means the costs totaling \$ ---0-- listed under the heading "Other Costs" on the Project Budget attached hereto as Exhibit D. Other Costs shall be considered Project Costs but shall not be included in the determination of the Lease Transfer Amount.

"Overhead Allowance" means the overhead allowance to be drawn by Developer in accordance with the provisions of Section 11(b) of this Agreement.

"Preliminary Plans and Outline Specifications" are the initial renditions for the Base Shell and Core Building, schedules of which plans and specifications is attached hereto as Exhibits C and incorporated herein by this reference.

"Premises" means the entirety of the Building to be constructed on the Building Land together with a leasehold interest in the Building Land pursuant to the Building Ground Lease

"Project" means the total design and construction, including demolition of existing improvements on the Building Land, all professional design services, and all labor, materials and equipment used or incorporated in such design and construction of the Building to be constructed on the Building Land. The Project shall include work which is consistent with and reasonably inferable from the approved Project Requirements as being necessary to produce the intended results and may include the acquisition of certain light, view or other easements or property interests benefiting the Project not included in the Project Requirements to the extent that the cost thereof is paid from the City's Contingency.

"Project Budget" means the budget for development of the Project attached to this Agreement as Exhibit D, as revised from time to time in accordance with this Agreement.

"Project Contingency" means the contingency by that name set forth in the Project Budget. The amounts of the various line items of the Project Budget are estimates only of the Project Costs to be incurred. To the extent the actual Project Costs in any line item of the Project Budget exceed the amount shown for such line item, Developer shall first allocate amounts in other line items, in which the actual known Project Costs will be less than the amount of the Project Budget, to the line item in which the excess Project Cost has been incurred. Following the allocation by Developer as set forth in the preceding sentence with respect to all line items, Developer is entitled to draw upon the Project Contingency for such excess Project Costs.

"Project Costs" means all costs for the completion of the development, design, permitting and construction of the Project, including, without limitation, all demolition costs, all permit fees, all costs of the Base Shell and Core Building, HVAC, electrical and other building systems, all costs of Tenant Improvements, all costs of fixtures, furnishing and equipment described in the Construction Documents, all costs of architectural services provided by the Architect under the Architect's Agreement, all costs of services provided by the Interior Architect under the Interior Design Contract with respect to the Tenant Improvements, all other professional design and other services provided by Contractors or other professionals engaged by the Developer or General Contractor, all amounts paid to General Contractor under the General Construction Contract including all labor, material, and equipment used or incorporated in such design and construction, all amounts paid to other Contractors and subcontractors, if any, under any other Construction Contract or subcontract entered into by Developer or by the Developer on behalf of and acting as the City's agent in connection with the Project, including all labor, material, equipment used or incorporated in such design and construction, services provided by engineers, environmental consultants, surveyors and other professionals and consultants retained by Developer in connection with the Project, Other Costs, Developer's Overhead Allowance, Developer's Fee, insurance (other than Bond insurance), bonds (other than the Certificates of Participation), applicable state and local retail sales, business and occupation and other taxes, plus the Project Contingency. Project Costs shall exclude only (a) City's Personal Property and any taxes thereon (which shall be paid by City at its sole cost and expense), (b) Financing Costs, (c) costs for art or similar enhancements that are not included in the Project Requirements and not paid from the City's Contingency; (d) costs of acquiring certain light, view or other easements or property interests benefiting the Project that are not included in the Project Requirements and are not paid from the City's Contingency; (e) costs of removing or remediating any Hazardous Substances in, on or emanating from the Building Land in excess of the amount specifically set forth in the Project Budget for environmental remediation; (f) to the extent not reflected in the Preliminary Plans and Outline Specifications, costs of any off-site improvements required as a condition to or in connection with the development or construction of the Project; and (g) Costs Not To Be Reimbursed.

"Project Fund" means the fund of that name established under the Trust Agreement for the purpose, among others, of paying Project Costs.

"Project Requirements" means the Preliminary Plans and Outline Specifications as set forth in Exhibit E and as amended by City and Developer.

"Project Schedule" means the schedule for development and construction of the Project as set forth on Exhibit F to this Agreement, as revised from time to time in accordance with this

Agreement, provided, however, that in no event shall the Project Schedule provide for Substantial Completion of the Project to occur later than June 30, 2009.

"Punch List" means a list of items required to be completed prior to Final Acceptance that are minor items which do not affect Developer's ability to lease the Premises to City and do not affect City's ability to use the Premises for the Permitted Use.

"Substantial Completion" "Substantially Complete" or "Substantially Completed" has the meaning set forth in Section 12 of this Agreement.

"Tenant" means City of Shoreline and its successors and permitted assigns as tenant under the Lease.

"Tenant Improvement Allowance" means, within the Lease Transfer Amount, an allowance to cover the design and construction costs of the Tenant Improvements. If any portion of this allowance is not used, it shall remain the property of City. Prior to commencement of construction of the Tenant Improvements under the General Construction Contract, Developer and General Contractor intend to agree upon a guaranteed maximum price for construction of the Tenant Improvements, which guaranteed maximum price shall contain a construction contingency line item. Any excess of the Tenant Improvement Allowance over the guaranteed maximum price (the "Excess Tenant Improvement Allowance") shall be automatically transferred to the City's Contingency.

"Tenant Improvements" means any improvements to the interior of the Building beyond the Base Shell and Core Building, including data wiring, all or which are more specifically described in the Construction Documents.

"Title Policies" shall mean the policy of title insurance issued to Developer upon its leasehold of the Land (herein called the "Title Policy") and the lender's policy of title insurance issued to the Trustee upon the recording of the mortgage or deed of trust in favor of the Trustee (the "Lender's Title Policy").

"Trust Agreement" shall mean a trust agreement entered into on or before the Leasing Date, which is acceptable to both the City and the Developer governing the issuance of any Certificates of Participation by the City and/or any landlord/tenant or other matters related to the Project.

"Trustee" shall mean a trustee selected on or before the Leasing Date by the City, and acceptable to the Developer, to act as the trustee under a Trust Agreement and as successor to the Developer under the Lease.

"Unavoidable Delays" means any delay in the performance by Developer or General Contractor of its obligations with respect to construction of the Project caused by strikes (other than those directly caused by Developer's acts, omissions or failure to negotiate in good faith), acts of God, Unusually Severe Weather Conditions, unavoidable casualties, acts of the public enemy, acts of terrorists, governmental embargo restrictions, or similar causes beyond the reasonable control

of Developer or General Contractor, which, after the exercise of due diligence to mitigate the effects thereof, delay construction of the Project, other than such delays resulting from (a) Developer's or General Contractor's failure to comply with the terms and provisions of this Agreement or the General Construction Contracts, (b) increased prices, or (c) unavailability of funds, provided the Lease Transfer Amount is paid in accordance with Section 12 of this Agreement. Unavoidable Delays will entitle Developer and General Contractor to an extension of the Developer Obligation Date but will in no way entitle Developer to additional compensation. Nothing contained herein shall prevent Developer from allocating the Project Contingency to increased costs of constructing the Project caused by Unavoidable Delays. In the event of any Unusually Severe Weather Conditions, the length of Unavoidable Delay to become effective under this Agreement as a result of such conditions shall be the period of time (not less than one day) by which Developer's progress in constructing the Project has reasonably been delayed as a result of such Unusually Severe Weather Conditions. Developer shall notify City in writing as soon as possible but in no event later than 35 days after any Unusually Severe Weather Conditions have occurred, shall provide in such notice a specification as to which of the listed conditions has occurred and the data supporting such determination, and shall provide an explanation of Developer's position as to the length of Unavoidable Delay to be granted as a result of such conditions, explaining how such conditions delayed Developer's construction progress. City shall respond within 10 days thereafter as to whether City accepts or disagrees with Developer's position. Any disagreements that cannot be resolved by Developer and City shall be resolved in accordance with Section 23 hereof, but work shall continue pending resolution of such dispute.

"Unusually Severe Weather Conditions" means the occurrence of any of the following scenarios of precipitation, low temperature, windstorms, or snow or ice, but only if the building shell has not been sealed from weather and there remains substantial external work or other conditions that are affected by adverse weather and that will adversely affect the Developer's ability to achieve Substantial Completion by the Developer Obligation Date:

- (a) Daily rainfall equal to or greater than .80 inch within any 24 hour period.
- (b) Daily rainfall equal to or greater than .50 inch during any "rainy season month" (i.e., October through June) in which the total monthly rainfall (at the end of such month) is at least 115% but less than 150% of the total average monthly rainfall for such month.
- (c) Daily rainfall equal to or greater than .30 inch during any rainy season month in which the total monthly rainfall (at the end of such month) is at least 150% but less than 200% of the total average monthly rainfall for such month.
- (d) Daily rainfall equal to or greater than .20 inch during any rainy season month in which the total monthly rainfall (at the end of such month) is at least 200% of the total average monthly rainfall for such month.
- (e) Daily maximum temperature less than 35 degrees Fahrenheit for two or more consecutive weekday days which impacts critical components of the work.

(f) A combination of temperature and precipitation that results in snowfall in excess of 3 inches on a particular day that does not melt and substantially disappear (but for isolated shaded areas) by 7:00 a.m. on the next work day, or that results in a coating of ice during four hours of the workday (not merely morning frost) that makes walking, transporting or loading of materials, or operation of equipment or vehicles hazardous or significantly slowed.

(g) Maximum wind gusts exceeding 50 mph at any time during the work day.

(h) Maximum wind gusts exceeding 35 mph during each hour of a continuous four hour period during the work day.

(i) Any other unusually inclement weather condition which causes the construction site to be in a condition such that the General Contractor orders the workers to not work on the construction site.

Weather conditions shall be measured at Sea-Tac International Airport by the Environmental Data and Information Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce. However, if Developer wishes to monitor weather at a location on or nearer to the Project site, Developer may make a proposal to install and operate, at its expense through Project Contingency, a weather monitoring station at the Property or in the vicinity of the Property, monitored by an independent consultant, and City shall not unreasonably withhold its approval to utilization of the weather data from such closer site so long as the equipment and independent consultant appear to be capable and trustworthy and the results obtained from such monitoring appear to be reasonably reliable.

"Warranty Period" shall mean that period commencing on the date of Substantial Completion of the Project and expiring two (2) years thereafter.

2. Development of the Project.

(a) Lease Transfer Amount. City hereby retains Developer and Developer shall, in accordance with the terms of this Agreement, develop, oversee and manage the design, permitting and construction phases of the Project in accordance with the terms and conditions of this Agreement. Subject to the terms of this Agreement, and provided the Lease Transfer Amount is paid or caused to be paid in accordance with Section 3 of this Agreement, Developer warrants (i) the delivery of the Project for a Lease Transfer Amount of \$28 million (Not To Exceed), constructed in a good and workmanlike manner and in substantial accordance with the Contract Documents on or before the Developer Obligation Date, free and clear of all liens. Project Costs exceeding the Lease Transfer Amount shall be paid by Developer. Upon compliance by Developer with its obligations under this Agreement, City shall cause the Trustee to disburse money to Developer or any other party entitled to receive such disbursement as set forth in Section 3 of this Agreement to pay the Project Costs.

(b) Tenant Improvement Allowance. The Lease Transfer Amount will include the Tenant Improvement Allowance \$4,427,500.00 for the design and construction of Tenant Improvements. Notwithstanding any other provision in this Agreement to the contrary, payment for the construction of Tenant Improvements shall be governed by the terms of this Section 2(b). Exhibit F hereto sets forth the dates for delivery of the space plans by which City (i) must deliver the plans if City wishes to have the Tenant Improvements bid as a part of the Base Shell and Core Building; or (ii) must deliver the plans to avoid potentially jeopardizing the Project Schedule. City's failure to meet those dates shall constitute a City-Caused Delay that may result in Costs Resulting From City-Caused Delay for which Developer shall not be held responsible. . Any City-Caused Delay shall also result in an adjustment of the Developer Obligation Date under Section 7(b) below.

Developer shall work with City to develop the pricing on City's desired Tenant Improvements. If the total cost of designing and constructing the Improvements is less than the Tenant Improvement Allowance, then all excess funds in the Tenant Improvement Allowance shall be retained by City upon Final Acceptance. If the total cost of designing and constructing the Tenant Improvements exceeds the Tenant Improvement Allowance, such excess costs shall be paid solely by City.

(c) Other Costs. Other Costs shall be considered Project Costs but shall not be included in the determination of the Lease Transfer Amount. Any portion of Other Costs not used for the Project shall be added to City's Contingency, and any portion of City's Contingency not used for the Project shall be applied as provided in the Trust Agreement.

(d) Diligent Efforts; Relationship of the Parties. Developer accepts the relationship of trust and confidence established with City by this Agreement and agrees that in providing the services set forth in this Agreement, Developer shall use its diligent efforts and shall furnish its best skill and judgment and shall cooperate with, coordinate, manage, direct and oversee the General Contractor, Architect, Interior Architect, all other Contractors, all other engineers, design consultants, managers and other persons retained in connection with the design, permitting, development and construction of the Project so as to cause Substantial Completion of the Project in an expeditious and economic manner consistent with the best interests of City, and otherwise in a good and workmanlike manner and in substantial accordance with the Contract Documents on or before the Developer Obligation Date, free and clear of liens (provided the Lease Transfer Amount is paid in accordance with Section 3 of this Agreement). Developer shall perform its services in accordance with the terms of this Agreement, including, without limitation, all services to be provided by Developer as described in Section 5 herein. Developer is not obligated to perform services for which City has contracted with a third party without Developer's prior written consent, nor obligated to pay for such services for which City has contracted with third parties without Developer's prior written consent, and such services shall be paid for directly by City and shall not be considered Project Costs unless they are pre-approved by Developer in writing.

(e) Mutual Cooperation; Liability of City. City and Developer shall fully and in good faith cooperate with each other to accomplish each of the activities provided herein. Developer acknowledges and agrees that City shall have no liability or responsibility whatsoever with respect to the activities provided to be performed by Developer herein, except to pay or

provide for the payment of the Lease Transfer Amount pursuant to the terms and conditions contained herein.

(f) Term. The rights and obligations of the Developer and City hereunder shall commence on the date of execution of this Agreement and shall continue until expiration of the Warranty Period, except with respect to those specific obligations of Developer which may survive the Warranty Period.

3. Lease Transfer and Project Financing.

(a) Transfer of Building and Other Property Interests. On the Leasing Date described in Section 3(b) below, and upon the payment of the applicable Lease Transfer Amount and the delivery of all items to be delivered by the City under Section 3(d) of this Agreement, the Developer agrees to transfer or cause the transfer to the City, or its designee including any Trustee designated by the City, all of Developer's right, title and interest in and to the Building and all of its right, title and interest as landlord under the Lease on the applicable Leasing Date pursuant to the Lease executed by and among the Developer as initial landlord, Trustee as successor landlord, and the City as tenant in accordance with the provisions of Chapter 35.42 RCW and this Agreement. The Lease shall specifically provide that the City shall pay all Closing costs and expenses, including but not limited to title insurance, escrow and recording fees, associated with the City's subsequent exercise of its right to purchase the Project. The Developer shall have no obligation to pay any Closing costs or expenses associated with the subsequent transaction.

(b) Leasing Date. The closing of the transfer of the Building described in Section 3(a) above to the City or its designee including any Trustee ("Closing"), and delivery of all items to be delivered on the Leasing Date under the terms of this Agreement shall be made at the offices of Chicago Title Insurance Company, or other nationally recognized title insurance company selected by the City ("Escrow Holder") which shall act as the escrow agent and issue the title insurance policies to be delivered in connection with the Closing. Closing of the transfer of the Building shall occur on any business day designated the Developer, which business day shall be no earlier than sixty (60) days after Substantial Completion and no later than four hundred (400) days after Substantial Completion. The business day chosen by the Developer shall be known as the Leasing Date. Such date may be mutually extended by the City and the Developer if additional time is needed to satisfy conditions to Closing.

(c) Title to Building. The Developer shall convey title to the Building to the City or its designee, including any Trustee, on the Leasing Date described in Section 3(b) above by executing and delivering the Lease or other form of conveyance which meets the requirements of this Agreement subject to (i) general exclusions contained within the title insurance policy to be issued and other matters of record that do not materially impact the use or marketability of the property being transferred; (ii) the Lease and this Agreement; and (iii) any liens, encumbrances, or defects created or incurred by the City after the date of this Agreement (collectively, "Permitted Exceptions"). The Developer shall cause any project lender holding a mortgage or deed of trust on the Property to execute and record a partial reconveyance of such mortgage or

deed of trust as to the Building as of the Leasing Date. The Developer shall cause the Escrow Holder to deliver an irrevocable commitment for an ALTA form standard coverage owner's policy of title insurance with liability in the amount of that portion of the Lease Transfer Amount attributed to the Building purchase, insuring that upon the Leasing Date the Building will be vested in the City or its designee, including any Trustee, subject only to the Permitted Exceptions, which title insurance policy shall, at the request of the City and at its sole cost and expense, contain an endorsement providing affirmative coverage against construction liens. Assignment of the Lease from the Developer to the Trustee, if applicable, shall be "without recourse" to the Developer, and the City shall agree to forever waive, discharge, and indemnify (including reasonable attorneys' fees and costs) the Developer from any and all claims, demands, liabilities, or causes of action arising out of, or relating to, the Lease after the Leasing Date. The Trust Agreement shall require the Trustee to state in any Certificates of Participation issued or executed by the Trustee that such certificates are issued or executed without recourse to the Developer.

(d) Payment and Financing of Lease Transfer Amount.

(1) Obligation to Make Payment. The City's obligation to provide for payment of the Lease Transfer Amount on the Leasing Date is not conditioned on the execution and delivery of Certificates of Participation or other tax exempt or taxable obligations regardless of interest rate, and in the event the City is unable to issue Certificates of Participation or is unable or elects not to issue other tax exempt obligations, the City shall nevertheless be obligated to pay, or cause to be paid to the Developer, the Lease Transfer Amount in cash or other immediately available funds on the Leasing Date.

(2) Tax Exempt Obligations. Not later than the Leasing Date, the City intends to finance its acquisition of the Project by causing the execution and delivery of tax exempt Certificates of Participation, or other tax exempt obligations in an amount sufficient to cause the payment to the Developer of the full Lease Transfer Amount. The City represents and warrants to the Developer that as of the effective date of this Agreement it has sufficient debt capacity under existing Washington law ("Debt Capacity") to permit the principal component of the Certificates of Participation or other obligations to equal the Lease Transfer Amount. The City agrees that it will not incur any indebtedness or lease obligations from and after the date of this Agreement which would cause it not to have sufficient Debt Capacity under Washington law to permit the principal component of the Certificates of Participation or other obligations to at least equal the Lease Transfer Amount the City has represented to the Developer that it intends to pay, or cause to be paid, the Lease Transfer Amount to the Developer in connection with the acquisition or transfer of the Project on the Leasing Date with the proceeds from the sale of Certificates of Participation in the Lease, and the Developer has relied on this representation in entering into this Agreement. In the event the City is unable to cause the execution and delivery of Certificates of Participation or the issuance of other obligations to finance the acquisition of the Project, the City shall nevertheless be obligated to pay the Lease Transfer Amount on the Leasing Date as provided in Section 3(c) of this Agreement. The City shall pay, or cause the payment of, any and all financing or other costs in connection with the issuance of the Certificates of Participation or other obligations.

(3) Alternative Conveyance. In the event the City, consistent with its obligations under this Agreement, does not lease the Building through a lease purchase agreement or does not cause the execution and delivery of the Certificates of Participation, the parties understand that all references to the Lease and the Certificates of Participation shall have no further force and effect and the Developer shall convey the Building to the City pursuant to a special warranty deed which meets the requirements of this Agreement and the City shall pay the Developer the Lease Transfer Amount in cash or other immediately available funds on the Leasing Date.

(e) Leasing Date. On or before the Leasing Date and payment to the Developer of the Lease Transfer Amount, the Parties shall deposit with the Escrow Holder those documents and other items, and shall take such actions, as described in Subsections 12 (a) through (c), below.

4. Project Design. Developer shall cause design services to be performed by qualified architects, engineers and other professionals recommended by Developer, approved by City and paid as part of the Project Costs.

(a) Selection of Development Team for Project. The following entities are intended to be retained in connection with the Project:

- (i) Architect:
- (ii) Structural Engineers:
- (iv) Land Surveyors:
- (v) Mechanical Design Build Engineers:
- (vi) Geotechnical Engineers:
- (vii) Environmental Consultants:
- (viii) Interior Architect:
- (ix) Electrical Design/Build Engineers:

In order to complete the Project, Developer shall have the right to select other professionals as necessary or desirable for the design, permitting, and development of the Project and shall have the obligation to recommend other Contractors for City's approval. All amounts paid to the entities outlined above and any others hereinafter engaged by Developer in connection with the performance of its duties and responsibilities under this Agreement, or as agent for City, shall be part of the Lease Transfer Amount.

(b) Design Contracts. Developer shall enter into the Architect's Agreement with the Architect and the Interior Design Contract with the Interior Architect.

(c) Project Budget. The Project Budget sets forth a detailed itemization by line item and category of all Project Costs, including City's Contingency, Project Contingency, the Overhead Allowance and Developer's Fee. The Project Budget is attached hereto as Exhibit D.

(d) Construction Drawings. Developer shall cause the Architect to prepare the Construction Drawings and Detailed Specifications for the Base Shell and Core Building and cause the Interior Architect to prepare such necessary plans and specifications for the Tenant Improvements, in each case for Developer's review and City's approval. The intention of the parties is to cooperate in good faith to provide a completed design which meets all requirements of law and is consistent with all Project Requirements and the building quality reflected therein. The Construction Drawings and Detailed Specifications for the Base Shell and Core Building construction and Tenant Improvements shall include, at a minimum, all architectural services necessary to provide Construction Documents for the Base Shell and Core Building and Tenant Improvements portions of the Project.

(e) ADA Compliance. Each design contract shall include a provision requiring that upon Substantial Completion of that portion of the work covered by that design contract, the work and the portion of the Project so constructed shall comply with the applicable Americans With Disabilities Act requirements referenced herein.

(f) City's Review. City may participate in all design meetings with Developer, Architect, Interior Architect and other design professionals as appropriate in the course of the development of all Construction Documents in order to facilitate the approval of such Construction Documents in accordance with the terms of this Agreement. City shall promptly review the Project Budget and all Construction Drawings and Detailed Specifications submitted in accordance with this Agreement and shall give Developer written notice within ten (10) business days following its receipt of the Project Budget and/or Construction Drawings and Detailed Specifications of its approval or disapproval thereof, specifying in the case of its disapproval, its reason therefor. City shall have the right to disapprove such Construction Drawings and Detailed Specifications which (i) do not meet the Project Requirements, (ii) do not comply with Requirements of Law, (iii) do not comply with previous Construction Drawings and Detailed Specifications in all material respects, or (iv) propose changes in work or materials that would result in a material change in appearance or diminution in quality of the Project. If no objections or comments are received within such ten (10) business day period, then the submittals shall be deemed approved.

(g) Resubmittals. If objections or comments are submitted in writing within the time frame and in accordance with the requirements set forth in the preceding subsection, Developer shall cause the Architect and/or the Interior Architect to make changes in the Construction Drawings and/or Detailed Specifications consistent with reasonable objections or comments made by the City and shall resubmit the same to City in accordance with the foregoing schedule for further review. The process of resubmittal and review shall continue until the submittals have been approved by all the parties. The final Construction Drawings and Detailed Specifications setting forth in detail the requirements for the construction of the Project which have been approved by City are called the Construction Documents. There shall be no material change in the Construction Documents except as set forth in Section 8 below.

(h) Permit and Construction Documents. Developer shall cause the Architect and other design professionals to prepare Construction Documents as required for submittal of the building permit and other permit applications in accordance with Section 6 hereof, and as required for construction of the Project by the Contractors.

5. **Construction Management Services.** Developer shall provide City with all construction administration and construction management services necessary or desirable to cause Substantial Completion of the Project on or before the Developer Obligation Date and final completion in a good and workmanlike manner and in substantial accordance with the Contract Documents, including, without limitation, the following:

(a) **Preconstruction Phase.**

(i) Developer shall oversee all design work done by Architect, Interior Architect and other design professionals for the design and development of the Project. Developer shall expeditiously review design documents during their development and advise on proposed site use and improvements, selection of materials, building systems and equipment and methods of Project delivery. Developer shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, and time requirements for procurement, installation, construction and factors related to construction costs including, but not limited to, costs of alternative designs or materials, budgets and possible economics.

(ii) Developer shall prepare and periodically update the Project Schedule for City's acceptance. Developer shall obtain the Architect's and Interior Architect's approval for the portions of the preliminary Project Schedule relating to the performance of their services. Developer shall coordinate and integrate the Architect's and Interior Architect's services into the Project Schedule and Developer's and City's responsibilities with anticipated construction schedules, highlighting critical and long lead time items.

(iii) Developer shall consult with City and Architect regarding the Construction Documents and make recommendations whenever design details adversely affect constructability, cost or schedules.

(iv) Developer shall establish the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. Developer shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

(v) Developer shall determine the division of the Project into individual contracts for various categories of work, including the method to be used for selecting Contractors and awarding Construction Contracts. Developer shall review the Construction Documents as required to provide that (1) the work of the Contractors is coordinated; (2) all requirements for the Project have been assigned to the appropriate Construction Contract; (3) the likelihood of jurisdictional disputes has been minimized; and (4) proper coordination has been provided for phased construction.

(vi) Developer shall prepare a Project Schedule providing for the components of the work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products requiring long lead time, and the occupancy requirements of City.

(vii) Developer shall expedite and coordinate the ordering and delivery of materials requiring long lead times.

(viii) Developer shall select and coordinate the professional services of surveyors, special consultants and testing laboratories required for the Project.

(ix) Developer shall provide an analysis of the types and quantities of labor required for the Project and shall review the availability of appropriate categories of labor required for critical phases. Developer shall make recommendations for actions designed to minimize adverse effects of labor shortages.

(x) Following City's approval of the Construction Documents, the Developer shall update and submit the latest estimate of Project Costs, Project Budget and the Project Schedule for City approval.

(xi) Developer shall develop bidders' interest in the Project, establish bidding procedures, issue bidding documents to bidders and conduct pre-bid conferences with prospective bidders. Developer shall submit the list of prospective bidders for City's review. City shall have the right to reject any bidder if there exists substantial and reasonable cause for such rejection. Developer shall respond to questions from bidders and the issuance of addenda.

(xii) Developer shall receive bids, prepare bid analyses and award contracts or reject bids.

(b) Construction Phase.

(i) Developer shall administer all Construction Contracts for the Project in cooperation with the Architect.

(ii) Developer shall provide administrative, management and related services to coordinate scheduled activities and responsibility of the Contractors with each other and with those of the Developer, City and Architect to manage the Project substantially in accordance with the Project Schedule and Contract Documents.

(iii) Developer shall update the Project Schedule incorporating the activities of the Contractors on the Project, including activity sequences and duration, allocation of labor and materials, processing of shop drawings, product data and samples and delivery of products requiring long lead time and procurement. The Project Schedule shall include City's occupancy requirement showing portions of the Project having occupancy priority. Developer shall update and reissue the Project Schedule as required to show current conditions. If an update indicates that the previously approved Project Schedule may not be met, Developer shall take corrective action so as to cause the Project to be Substantially Completed on or before the Developer Obligation Date.

(iv) Developer shall schedule and coordinate the sequence of construction so as to cause Substantial Completion of the Project on or before the Developer Obligation Date.

(v) Developer shall dutifully administer and enforce the Architect's Agreement and the Interior Design Contract and Developer shall dutifully administer and enforce all Construction Contracts with subcontractors and, provided that City authorizes Developer to do so and assigns to Developer any rights necessary in connection therewith, Developer shall fully enforce, administer and take such actions as are necessary to implement contracts with the Architect, Interior Architect, and contractors. Developer shall notify and consult with City regarding any material breaches or defaults by any party to a Construction Contract relating to the Project. Developer shall, with respect to such breach or default by such contracting party, follow the instructions or directions of City so long as such instructions or directions do not, in the reasonable professional judgment of Developer, restrict, delay, impair or otherwise jeopardize the Substantial Completion of the Project by the Developer Obligation Date.

(vi) Developer shall develop cash flow reports and forecasts for the Project (including variances between actual and budgeted costs) and provide City with copies of same.

(vii) In consultation with the Architect, Developer shall oversee the course of construction and shall conduct such inspections of the course of construction and testing of work to insure that the work of each Contractor is being performed in substantial accordance with the requirements of the Contract Documents in a good and workmanlike manner, free of defects and deficiencies in work, and free and clear of all liens. Developer shall reject all work which does not conform to the requirements of the Contract Documents and cause corrective action to be taken.

(viii) Developer shall transmit to Architect requests for interpretations of the meaning and intent of Construction Drawings and Detailed Specifications and assist in the resolution of questions that arise.

(ix) Developer shall expedite the processing and approval of shop drawings, product data, samples and other submittals.

(x) Section 8 of this Agreement shall control with regard to changes in the work.

(xi) Developer shall record the progress of the Project. Developer shall submit written monthly progress reports to City and Developer, including information on each Contractor and each Contractor's work, as well as the entire Project, showing percentages of completion. Developer shall maintain a daily log, containing a record of weather, each Contractor's work on the site, number of workers, identification of equipment, work accomplished, problems encountered and such other information as City may require.

(xii) Developer shall maintain at the Project site or at Developer's offices in

Shoreline, Washington, one record copy of all Contract Documents, all drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record changes and selections made during construction together with approved shop drawings, product data, samples and similar required submittals. Developer shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of the footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. All such records shall be made available to Architect, Interior Architect and City upon request and, upon completion of the Project, duplicate originals shall be delivered to City.

(xiii) Although Developer shall not be responsible for the purchase of materials, systems and/or equipment, Developer be responsible for the delivery and storage, protection and security of such materials, systems and equipment that are part of the Project until such items are incorporated into the Project.

(xiv) Developer shall develop and implement procedures for the review and processing of applications by Contractors for progress and final payments.

(xv) Based on the Developer's observations and evaluations of each Contractor's Application for Payment, the Developer shall review and certify the amounts due the respective Contractors. The Developer shall prepare Project Applications for Payment based on the Contractors' Applications for Payment.

(xvi) Each Project Application for Payment and certification of the Contractor(s)' certificates for payment shall constitute a representation to City based on the Developer's overall supervision of the course of construction, inspections conducted at the site, and review of the data comprising the Contractors' Application for Payment that, to the best of Developer's knowledge, information and belief, the work has progressed to the point indicated and the quality of the work is in substantial accordance with the Contract Documents (subject to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by Developer in Developer's Project Application for Payment).

(xvii) Developer shall supervise the final testing and start-up of utilities, operational systems and equipment.

(xviii) When Developer considers each Contractor's work or a designated portion thereof substantially complete, the Developer shall, jointly with the Architect, prepare for the Contractor a list of incomplete or unsatisfactory items (Punch List) and a schedule for their completion. The Developer shall assist Architect in conducting inspections to determine whether the work or designated portion thereof is substantially complete.

(xix) Developer shall coordinate the correction and completion of the work, including all Punch List items, and shall evaluate the completion of the work of the Contractors and make final recommendations to the Architect when the Project or any designated portion thereof has achieved Final Acceptance. Developer shall assist Architect in conducting final inspections of the work.

(xx) Developer shall take such other and further action as may be necessary or desirable to cause the Project to be Substantially Completed on or before the Developer Obligation Date.

6. Permits.

(a) Permits. Developer shall obtain all permits necessary to construct the Project. For those permits yet to be acquired as of the date of the execution of this Agreement, City shall have ten (10) business days to review any permit application Developer intends to submit. City's failure to object to terms or conditions of a permit application shall not be construed as approval of the same but shall constitute City's authorization for Developer to submit the permit application. For those permit applications already submitted by Developer prior to the execution of this Agreement, City shall receive a copy upon request. City shall join in any application for permits not issued by City (e.g. third party utility permits) as required, at the expense of Developer. Developer shall pursue issuance of such permits with all due diligence.

(b) Costs. All costs associated with issuance of the permits shall be Project Costs.

(c) Schedule and Delays. City and Developer anticipate issuance of permits by the City of Shoreline and commencement of construction of the Project within the time set forth in the Project Schedule set forth as Exhibit F hereto. The Project Schedule shall be updated by Developer and City from time to time as reasonably required to reflect the current status of the Project. There shall be no increase in the Lease Transfer Amount as a result of any delay in issuance of the permits or commencement or completion of construction of the Project.

7. Construction.

(a) Commencement of Construction. As soon as reasonably practical following issuance of the permits, Developer shall cause Commencement of Construction to occur and to diligently and continuously prosecute such work to Final Acceptance. Developer shall coordinate the sequencing of all construction and shall cause all other Contractors to commence construction of that portion of the work covered under their respective Construction Contracts and diligently and continuously prosecute such work to Final Acceptance. Developer warrants to the City that materials and equipment incorporated into the Project shall be new unless otherwise specified.

(b) Delays. The Developer Obligation Date shall be extended to the extent of (i) Unavoidable Delays, provided however that extensions due to Unavoidable Delays shall not exceed sixty (60) days; (ii) City-Caused Delays and (iii) delays incurred as a result of the presence of any Hazardous Substances in, on or emanating from the Building Land as of the Effective Date of the Lease (as defined therein) in excess of the time specifically provided in the approved Project Schedule for remediation of any such Hazardous Substances. The existence of Unavoidable Delays of up to 60 days shall excuse General Contractor and Developer for resulting delays and changes in the Project Schedule, provided however that there shall not be any adjustment to the Lease Transfer Amount for additional costs resulting therefrom. If Substantial Completion of the Project fails to occur by the Developer Obligation Date, as extended pursuant to the first sentence

of this Section 7(b), then Developer shall pay to Trustee on the first day of each month an amount equal to the sum of the Monthly Rent payable under the Lease, until Substantial Completion; provided, however, that to the extent City receives insurance proceeds under the Builders Risk Insurance Policy described in Section 16(a)(v) below to reimburse City for loss of income and rents, such sums shall be credited against Developer's obligation to pay Monthly Rent to the Trustee. The Monthly Rent paid by Developer shall be prorated if a partial month elapses before Substantial Completion of the Project occurs. Upon Final Acceptance, if there are funds remaining in the Project Costs Account (as defined in the Trust Agreement) prior to the final distribution of said Account (i.e., the sharing of contingency money), if Substantial Completion of the Project has failed to occur by the Developer Obligation Date, and if Developer has made the payments it is required to make pursuant to this Section 7(b), the Developer and the City, shall determine and direct Trustee to pay to the Developer any additional interest earnings that accrued on the undisbursed Bond proceeds as a direct result of such delay in excess of interest that would have accrued absent such delay.

(c) Construction Contracts. All Construction Contracts shall include recitations or provisions requiring the following:

(i) The City desires that the Project incorporate and include public art, consistent with the spirit and intent of City's Public Art Program. City shall have the right to review and approve the process for, and selection of, public art for the Project, which approval shall not be unreasonably withheld; provided, however, that City may condition or withhold approval for the installation of any public art in the Project if it would have a material and adverse effect on the construction of the Project or on the Project Schedule.

(ii) All Contractors and subcontractors employed on the Project shall pay the prevailing rate of wages as defined in Chapter 39.12 of the Revised Code of Washington.

(iii) Provisions for initiating, maintaining and providing supervision of safety precautions and programs in connection with the construction of the Project.

(d) Protection of Persons and Property.

(i) Developer shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the construction of the Project.

(ii) Developer shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) all persons working on the Project construction site and all other persons who may be affected thereby; (2) the Project and materials and equipment to be incorporated therein; and (3) other property at or adjacent to the site.

(iii) Developer shall or shall cause all Contractors to give notices and comply with all applicable laws, ordinances, rules, regulations, and orders of public authorities bearing on the safety of persons and property and their protection from damage, injury or loss.

(iv) Developer shall be liable for all damage or loss (other than damage or loss insured under the property insurance) to the Project except to the extent caused by the negligent actions of City, its agents or employees or by City.

(e) Insurance During Construction. Insurance shall be provided by Developer, City, Architect and Contractors in accordance with the provisions of Section 16 of this Agreement.

(f) Use of Project Contingency. The amounts set forth in the various line items of the Project Budget are estimates only of Project Costs to be incurred. To the extent the actual Project Costs in any line item of the Project Budget exceed the amount shown for such line item, Developer shall first allocate amounts in other line items, in which the actual known Project Costs shall have been less than the amount in the Budget, to the line item in which the excess Project Cost(s) has occurred. Following the allocation by Developer as set forth in the preceding sentence with respect to all line items, except Project Contingency, Developer shall be fully entitled to draw upon the Project Contingency line item of the Project Budget and use the Project Contingency in its entirety, if necessary to pay the Project Costs.

(g) Warranties. Developer shall secure for the benefit of City all warranties and guarantees of the work by Contractors, suppliers and manufacturers of components of the Project. Upon Final Acceptance, Developer shall assign such warranties to City. After Final Acceptance of the Project and during the Warranty Period, Developer shall assist City to enforce any warranties or guarantees with respect to the Project upon request. The Developer shall provide a warranty of materials and workmanship for a period of two (2) years with respect to each major component of the work following Substantial Completion of the Project. Without increasing the Lease Transfer Amount, Developer and City have agreed that Developer shall obtain warranties of longer periods from Contractors and material suppliers for the fixtures, services, or subcontracts set forth in Exhibit J, provided, however, that the Developer shall not be required to assist City to enforce any warranties or guarantees that extend beyond the Warranty Period.

(h) Correction of Work. During the Warranty Period, Developer shall promptly correct or cause to be corrected work properly rejected by City or known by Developer to be defective or failing to conform to the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, and shall correct or caused to be corrected work found to be defective or non-conforming within the Warranty Period. Such costs (to the extent not borne by insurance) shall be Project Costs. It is intended that at Final Acceptance, there shall remain at least \$50,000 in the Project Costs Account in the Project Fund to cover these items during the Warranty Period; said \$50,000 shall be held by Trustee in trust upon Final Acceptance to be applied toward warranty work, with any amounts not so expended to be treated as savings in accordance with, and subject to the limitations in, Section 12(h)(ii) below; however if there are no funds left in the Project Costs Account in the Project Fund (including the Project Contingency) to pay for the corrective action, such costs shall be paid by Developer from its own funds.

(i) Stop Work by City. If Developer fails to correct defective work as required, or persistently fails to carry out work in accordance with the Construction Documents, City, by

written order, may order Developer to stop the work, or any portion thereof, until the cause for such order has been eliminated.

(j) Developer Default. If Developer defaults or neglects to carry out the work in accordance with the Contract Documents and fails within seven calendar days after receipt of written notice from City to commence and continue correction of such default or neglect with diligence and promptness, City may give a second written notice to Developer and, if Developer fails within such second seven calendar day period to commence and continue correction of such default or neglect with diligence and promptness, then City may, without prejudice to other remedies City may have, act to correct such deficiencies. In such case an appropriate change order shall be issued deducting from the Lease Transfer Amount the costs of correcting such deficiencies. If the payments then or thereafter due Developer are not sufficient to cover the amount of the deduction, Developer shall pay the difference to the City. Such action by the City shall be without prejudice to any other rights or remedies to which City may be entitled under this Agreement or applicable law.

8. Changes to the Work.

(a) No Changes Without City Approval. Following approval of the Construction Documents by City there shall be no changes in the work except in accordance with this Section 8.

(b) Developer Approved Changes in the Work. It is anticipated that there will be field orders and change orders which shall result in changes to the plans and specifications. Developer shall use its reasonable efforts to apprise City of proposed changes in the work and its recommendations regarding them prior to any action being taken. It is anticipated that it may not always be possible to receive City's prior approval to these changes in a timely manner. Therefore, field orders and change orders may be approved by the Developer, without prior City approval, but only if the changes authorized by these field orders and change orders shall not have the effect of extending the Developer Obligation Date or materially altering the work. As soon as practical, but no later than with the next Project Application for Payment, Developer shall provide City with all field orders and/or change orders approved by Developer. For the purposes of this Section a material alteration would reduce the intended quality of the Project, result in an increase of City's operational costs over time, or result in a substitution of any of the systems in the Project (including but not limited to HVAC, plumbing, electrical, elevators, roofing, fire and life safety, infrastructure components). In the case of either a material alteration or a change that would result in failure to Substantially Complete the Project by the Developer Obligation Date, prior written approval by the City of the proposed change must be received.

(c) Change Proposals Initiated by City. City may initiate change proposals which shall be processed in accordance with the General Construction Contract.

9. Payment of Project Costs. Subject to the terms of this Agreement, the Developer shall design, finance and construct the Project at its sole cost and expense, including any loans that Developer may deem necessary to carry out construction. The City shall have no obligation to pay or provide for payment of the Lease Transfer Amount until the Leasing Date, if and when it occurs.

10. **Other Services by Developer.** Services may be performed by the Developer at the written request of City which are not included as part of the Project. Such services shall be performed pursuant to a separate written agreement between City and Developer.

11. **Developer's Fee and Overhead Allowance.**

- (a) The Lease Transfer Amount includes a fee payable to Developer in the amount of \$1,169,554.00 (the "Developer's Fee"). The Developer's Fee portion of the Lease Transfer Amount shall not be paid by the Trustee to the Developer until the Developer's performance of certain actions and the Developer's provisions of certain documents set forth in Section 12.
- (b) Developer's Overhead Allowance is \$233,911.00. The Developer may make a monthly draw during the construction period based on the value of work completed.

12. **Completion of the Project and Payment of Lease Transfer Amount.**

(a) **Substantial Completion of the Project.** "Substantial Completion" or "Substantial Completion of the Project" means that each of the following events shall have occurred with respect to the Project:

(i) Developer shall have notified City in writing that the Project, including the Tenant Improvements, are Substantially Complete in substantial accordance with the Contract Documents, subject only to the completion of normal Punch List items.

(ii) Architect shall have issued its "Certificate of Substantial Completion" (AIA Document G704) stating that the work is sufficiently complete in substantial accordance with the Contract Documents to permit City to occupy or utilize the Project for government office purposes;

(iii) The City of Shoreline has issued a temporary certificate of occupancy such that the City is permitted to and could, pursuant to such issued certificate of occupancy, physically occupy the Project for normal government office purposes, including parking in the Building.

(iv) City has received evidence from Developer satisfactory to City that all real property taxes and assessments on the Project payable by Developer that were due and owing have been paid.

(v) 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 partial waivers and releases of lien for work performed prior to the date of

its "Certificate of Substantial Completion" in form satisfactory to City, from such materialmen, laborers, contractors and subcontractors as City, may require; and

(vi) City, shall have accepted the Project as Substantially Complete, subject to completion of the Punch List items agreed upon by City.

Notwithstanding that Substantial Completion of the Project shall have occurred, City shall be entitled to provide Developer with a Punch List, in accordance with the provisions of this Section 12.

(b) Notice of Substantial Completion. Developer shall give notice in writing to City at least thirty (30) days prior to the date upon which Developer anticipates the Project shall be Substantially Complete. During the fifteen (15) business day period after the delivery of the estimated completion notice, City, Developer, and Architect shall meet on one or more occasions, if necessary, and tour to inspect and review the Project, as applicable, to determine whether it is Substantially Complete. The parties shall prepare the Punch List to be completed prior to Final Acceptance. The completion of the Punch List shall not be required in order for the Project to be Substantially Complete.

(c) Prerequisites for Payment of Lease Transfer Amount. Upon Substantial Completion of the Project, and on or before the Leasing Date and payment to the Developer of the Lease Transfer Amount (except for the Developer's Fee portion and Project Contingency portion), the Parties shall deposit with the Escrow Holder the various documents described below:

(1) Delivery by the Developer. The Developer shall deliver, on the Leasing Date, and as applicable to the contemplated transaction, the following documents:

(i) The applicable Lease, Memorandum of Lease for recording, and a special warranty deed to the land and fixture improvements constituting that portion of the Project being transferred, which meets the requirements of this Agreement, executed in recordable form and ready for recording on the Leasing Date together with an executed real estate excise tax affidavit prepared by the Escrow Holder. In the event of a lease arrangement, only the Memorandum of Lease shall be recorded by the Escrow Holder. The special warranty deed shall be delivered to the City or the City's designee, as instructed by the City.

(ii) Evidence reasonably satisfactory to the City that the premises being transferred is free and clear of all liens arising by or through the actions of the Developer, its contractors, subcontractors or their respective agents and employees, other than Permitted Exceptions; provided, however, that if the title insurance policy to be issued in conjunction with Closing of the segment of the Project being transferred contains an endorsement protecting against said liens, then no further evidence shall be required.

(iii) Certification that the Developer is not a 'foreign person' within the meaning of the Foreign Investment In Real Property Tax Act.

(iv) Any partial reconveyance documents required to eliminate of

record any existing mortgages or deeds of trust which are not Permitted Exceptions as hereinabove defined and, if applicable, any affidavit required in conjunction with the title company endorsement providing affirmative coverage against construction liens and the rights of parties in possession.

(v) An irrevocable commitment from the Title Company to issue the City or its designee an ALTA owner's standard coverage title insurance policy in form and substance reasonably satisfactory to the City showing fee simple title to the segment of the Project being transferred vested in the City or its designee, including the Trustee if the City issues Certificates of Participation, subject only to the Permitted Exceptions, which title insurance policy, upon request of the City at its sole cost and expense, shall contain an endorsement providing affirmative coverage against construction liens. At the request of the City, all or any portion of the owner's policy of title insurance shall be reinsured under reinsurance agreements and with reinsurers reasonably satisfactory to City, and the cost of such reinsurance, if any, shall be paid by the City.

(vi) In the event the Developer has transferred all or any portion of its interest under this Agreement, either voluntarily or involuntarily, an assumption agreement satisfactory in form and substance to the City under which such transferee shall assume such rights, duties and obligations under this Agreement as the Developer may have assigned, transferred, or delegated to such transferee.

(vii) Such resolutions, certificates or other documents as shall be reasonably required by the Escrow Holder.

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

(2) Delivery by the City. The City shall deliver, or cause to be delivered, on the Leasing Date, and as applicable to the contemplated transaction, the following documents:

(i) The applicable Lease Transfer Amount, in cash or other immediately available funds, for the Project, except that the Developer's Fee and the Project Contingency (if any) portion of the Lease Transfer Amount will be withheld pending the actions described in Subsections 12 (e)-(h) below.

(ii) The Lease and Memorandum of Lease, together with the real estate excise tax affidavit prepared by the Escrow Holder, duly executed and acknowledged by the City and Trustee.

(iii) Copies of any Trust Agreement or other documentation executed by Trustee or others necessary to cause the execution and delivery of the Certificates of Participation and the Lease by the Trustee or the City's designee on or before the Leasing Date.

(iv) Such ordinances, authorizations, certificates or other documents or agreements relating to the City, or the City's designee or Trustee, as shall be reasonably required

by the Escrow Holder in connection with closing the City's acquisition of the Project segment being transferred.

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

(3) Other Instruments. The Developer, the City, and the City's designee or Trustee, if applicable, shall each deposit such other instruments as may be reasonably required by Escrow Holder or as may be otherwise required to close the escrow and consummate the acquisition of the Project in accordance with the terms hereof.

(4) Prorations. All ownership, use, operation and maintenance expenses associated with the Project, including, but not limited to, real and personal property taxes, special and other assessments, annual permits and/or inspection fees (calculated on the basis of the respective periods covered thereby), and other expenses shall be prorated as of 12:01 a.m. on the Leasing Date so that the Developer bears all expenses of the transferred segment of the Project prior to the Leasing Date and City bears all expenses of the transferred segment of the Project on and after the Leasing Date. Under current Washington law, the City is exempt from payment of certain real and personal property taxes. In the event the City is exempt from payment of certain real and personal property taxes under Washington law on the Leasing Date, the City shall not be responsible for payment of the same on and after the Leasing Date. The Developer may seek reimbursement from the taxing authorities to whom the Developer may have paid any such real or personal property tax that is allocable to any period of time after the Leasing Date and the City shall cooperate with and make all reasonable efforts to assist the Developer in securing such reimbursement. If any revenue or expense amount cannot be ascertained with certainty as of the Leasing Date, it shall be prorated on the basis of the parties' reasonable estimates of such amounts, and shall be the subject of a final proration sixty (60) days after Closing or as soon thereafter as the precise amounts can be ascertained. Either Party owing the other Party a sum of money based on adjustments made to the prorations after the Leasing Date shall promptly pay that sum together with interest thereon at the rate of nine percent (9%) per annum from the date of demand therefor to the date of payment if payment is not made within thirty (30) days after the delivery of a statement therefor.

(5) Closing Costs and Expenses. The City shall pay all costs and expenses associated with (1) any real estate excise tax associated with the Lease or other transfer of the Project; (2) any extended title insurance policy or any requested reinsurance or endorsements (and survey or other costs associated therewith); and (3) execution and delivery of the Certificates of Participation or other City obligations incurred to finance the acquisition or transfer of the Project pursuant to the City's financial arrangements. The Developer shall pay the cost and expense associated with the City's ALTA owner's standard coverage title insurance policy. The Developer and the City shall each pay one-half (1/2) of the standard costs and expenses associated with escrow and recording fees. In the event that Closing involves a Lease, the Parties understand and agree that the Developer shall not be obligated to pay any Closing or other costs and expenses associated with a subsequent transaction whereby the City exercises its right to purchase the Project.

(6) Close of Escrow; Recording. On the Leasing Date, the Escrow Holder shall disburse the Lease Transfer Amount to the Developer and shall record the documents described in Section 12 (c), as applicable, in the real property records of King County, Washington, and deliver the other documents described in Sections 12 (c). The Escrow Holder shall deliver copies of all documents executed, delivered and/or recorded in connection with this transaction to the Developer, any project lender(s), the City, the City's designee or Trustee, if any, as applicable, together with closing statements in form customarily prepared by Escrow Holder within five (5) days following the Leasing Date.

(d) Completion of Punch List Items. Following Substantial Completion, Developer shall cause all Punch List items to be completed promptly in accordance with the Contract Documents.

(e) Final Acceptance. Upon Final Acceptance, Developer shall be entitled to payment of the Developer's Fee component of the Lease Transfer Amount as well as a portion of the Project Contingency in accordance with Section 12(h), below. Developer shall give notice in writing to City at least thirty (30) days prior to the date upon which the Project shall be ready for Final Acceptance. "Final Acceptance" means that each of the following items shall have occurred with respect to the Project:

(i) The City of Shoreline, Washington has issued all Certificates of Occupancy.

(ii) 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 in form satisfactory to Developer and the City from such materialmen, laborers, contractors and subcontractors as City may require.

(iii) The parties shall have agreed upon the estimated costs of the Punch List items and 150% of such estimated cost shall be withheld by the Trustee in the Project Costs Account until the Punch List items have been completed to the reasonable satisfaction of City. When the Punch List items have been completed, Developer shall notify City and, upon City's reasonable satisfaction that the Punch List items have been completed, City shall deliver its requisition to the Trustee for payment of the funds withheld by the Trustee under this Section 13(d)(iii).

(iv) Developer shall have submitted its Project Application for Payment together with evidence reasonably satisfactory to City that all construction costs have been paid in full, including evidence of full payment for any personal property installed on the Building Land as part of the Project Costs.

(v) The period for filing construction liens has expired or releases or discharges of construction liens in form and substance satisfactory to City have been obtained by the Developer from all Contractors in accordance with all Construction Contracts.

(vi) Architect shall have issued its "Certificate of Final Completion" and City shall have received the certificate of any other architect or engineer requested by City.

(vii) Developer shall have issued a certificate that (1) the Project has been finally completed in substantial accordance with the Contract Documents, and (2) no Hazardous Substances as defined in said certificate were incorporated into the structure of the Project.

(viii) Developer shall have delivered to City a written report showing the allocation of Project Costs among the categories of the Project Budget and the undisbursed Developer's Fee.

(ix) If title is insured, the City shall have received an endorsement to its Title Policy dated as of and issued on the date of Final Acceptance, which shall insure City and Trustee (1) against any liens for labor or materials, whether or not of record, which may have arisen in connection with the construction of the Project, and (2) show no additional exceptions to the Title Policy other than those approved by or arising through City.

(x) Developer shall have completed and delivered the matters set forth in Section 14.

(f) Approval of Final Application for Payment. Upon delivery of Developer's Application for Payment and other materials set forth above, City shall, acting reasonably and in good faith, review and approve the Final Application for Payment on or before that period expiring fourteen (14) business days after receipt of the Final Application for Payment, receipt of notice from Developer that the Punch List matters are complete, and City's receipt of the materials set forth in Section 14 of this Agreement. In the event no comments are received within said 14 business day period, City shall have waived its right to comment on the Final Application for Payment or to disapprove the completion of the Punch List. If City disapproves the Final Project Application for Payment or completion of the Punch List, or any portion thereof, City shall provide detailed written comments explaining the nature of the disapproval; whereupon, Developer and City shall meet within two (2) business days to determine mutually acceptable revisions to the Final Application for Payment and the completion of the Punch List. Failure of Developer and City to determine mutually acceptable revisions to the Final Application for Payment and the completion of the Punch List within the five (5) business day period, shall entitle either City or Developer to commence the disputes resolution process described in Section 23. Failure to reach agreement on the amount of the Developer's Final Application for Payment which is approved for payment shall in no way release Developer from its duties and obligations under this Agreement.

(g) Requisition of Final Payment. City shall execute and deliver the requisition for Final Payment to the Trustee within one (1) business day following expiration of said 14-business day period, or if City disapproves of the final Project Application for Payment, then within one (1) business day after the date of approval of the mutually acceptable revisions to the final Project Application for Payment or the determination of the disputes resolution process, if applicable. City shall take all steps to cause the Trustee to disburse the remaining money in the Project Costs Account, except for any money withheld for completion of the Punch List items under Section 12(e)(iii) and the \$50,000 reserved for warranty work as provided for in Section 8(i),

up to the Lease Transfer Amount in the amount shown on such requisition within one (1) business day of Trustee's receipt of such requisition. In addition, City shall in such requisition direct payment of the unexpended City's Contingency and Project Contingency and of the remaining Developer's Fee in accordance with the provisions of Sections 12(f) and 12(h) hereof.

(h) Savings; Disbursement of City's Contingency; Project Contingency.

(i) If all or some portion of the City's Contingency is not used for the Project, then the remaining portion of the City's Contingency shall be applied as provided in the Trust Agreement.

(ii) If all or some portion of the Project Contingency (as such amount may be increased or decreased in accordance with the terms of this Agreement) is not used for Project Costs, then two thirds of the unused Project Contingency shall be applied as provided in the Trust Agreement and one-third of the unused Project Contingency, capped at a maximum of \$200,000 shall be paid to Developer as part of the Final Payment, as an incentive fee.

13. Developer Representations; Warranties. Upon Substantial Completion of the Project, Developer shall represent and warrant as follows:

(a) The Project has been completed in substantial accordance with the Contract Documents (as revised by Project change orders set forth in Section 8) and is, and at all times during the Warranty Period shall be, free from defects in workmanship and materials in connection with the construction thereof.

(b) Developer has no knowledge of any structural defects, latent defects or building systems defects within the Project.

(c) The Project has been constructed in accordance with all Requirements of Law, all Permits and all insurance laws, regulations and requirements in effect at the time of construction of the Project.

(d) The Project is served by water, storm and sanitary sewage facilities, telephone, electricity, fire protection and other required public utilities adequate to serve the Project at the time of Substantial Completion of the Project.

(e) The Architect, Interior Architect and all Contractors, suppliers, materialmen and consultants have (subject to Developer's receipt of the payment of the Lease Transfer Amount) been paid in full for work related to construction of the Project and there are no liens, encumbrances or other defects affecting title to the Building Land which has been or will be filed against the Building Land and /or the Project with respect thereto, or if any such lien has been filed, Developer has arranged for a bond to remove such lien in accordance with Section 19 below.

(f) Developer is not aware of any physical defect in the Building Land or the Project which would prevent City from leasing the Project.

(g) The use and operation of the Project for government offices purposes and parking is permitted.

(h) To the best of Developer's knowledge and except as disclosed in writing there are no condemnation, environmental, zoning or other land use regulation proceedings currently instituted which could detrimentally affect the use and operation of the Project for its intended purpose. If during the term of this Agreement any such proceedings have been instituted, Developer shall have used its best efforts and due diligence to resolve them prior to Substantial Completion.

(i) Developer has provided City with prompt notice of any special assessment proceedings affecting the Building Land.

(j) The Project does not encroach onto adjoining land or onto any easements and there are no encroachments of improvements from adjoining land or the Building Land. The location of the Project does not violate any applicable setback requirements. The Building Land is not located in a flood zone.

(k) Except as disclosed to City in writing, there is no litigation pending, or to the best knowledge of Developer, threatened, with respect to the Project for matters undertaken by Developer under this Agreement.

(l) To the best of Developer's knowledge and except as disclosed in writing, there are no Hazardous Substances located in, on, under or affecting the Building Land or the Building.

(m) Prior to Substantial Completion, Developer has removed or remediated and properly disposed of all known Hazardous Substances first existing on the Land following the Commencement of Construction of the Project and if applicable, received a no further action letter from the appropriate governmental agency with respect to such Hazardous Substances, provided the foregoing shall not make the Developer responsible for the removal or remediation of any Hazardous Substances that the City is obligated to remove or remediate under the Building Ground Lease.

(n) To the best of Developer's knowledge, after due and diligent inquiry, all Permits necessary for the construction, use and occupancy of the Project have been obtained and are in full force and effect.

Each of the foregoing warranties with respect to the Project shall expire and be of no further force or effect, unless City shall have made a claim based upon an alleged breach of such warranties by Developer on or before the expiration of the Warranty Period; however such expiration shall not otherwise limit City's rights and remedies hereunder. In the event City alleges a breach of any of the foregoing warranties, City shall give Developer written notice of any such

allegation together with a detailed explanation of the alleged breach ("City's Warranty Claim"). Developer shall, within thirty (30) days of receipt of Owner's Warranty Claim, proceed to commence to cure the circumstances specified in City's Warranty Claim, or provide City with written notice of Developer's dispute of City's Warranty Claim. If Developer commences a cure or correction of the matter alleged in City's Warranty Claim, Developer shall proceed reasonably diligently and promptly to complete such cure or correction, and the Warranty Period for the particular matter shall be extended for the period necessary to complete cure or correction.

Developer shall warrant neither artist-made materials included in the Project nor those recycled construction products which City has directed Developer to include in the Project over Developer's prior written objections.

14. Developer Obligations. On or before Final Acceptance of the Project, Developer shall obtain and submit to City, the following:

(a) As-Built Plans. A complete set of final as-built plans and specifications prepared by General Contractor for the Project. Tenant Improvements will be provided on CAD.

(b) Manuals. All technical and service, instruction and procedure manuals relating to the operation and maintenance of all HVAC systems and other mechanical devices and equipment installed in the Project, except insofar as relating to City's Personal Property.

(c) Warranties. An assignment and delivery of all warranties, guarantees, maintenance contracts, and machinery and equipment warranties received by Developer from the General Contractor or any subcontractor thereof, or any supplier, materialmen or manufacturer relating to the Project; provided, however, that so long as Developer's warranty set forth in Section 13 herein remains in effect, and so long as Developer is not in default of its obligations under this Agreement, Developer reserves the right, notwithstanding the assignment and delivery of such warranties hereunder to City, to fully enforce all such warranties in the place and stead of City.

(d) Permits and Licenses. The originals (if not posted at the Project) of all Permits, licenses and other approvals necessary for the occupation, use and operation of the Project.

(e) As-Built Survey. An as-built Survey of the Building Land showing the location of all improvements constructed thereon.

15. Indemnification.

(a) Developer's Indemnification. The Developer shall protect, defend, indemnify, and save harmless the City, Trustee, Bond Insurer, and their respective officers, officials, employees, and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever (hereinafter "claims"), arising out of or in any way resulting from the Developer's officers, employees, agents, and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Agreement, to the maximum extent permitted by law or as defined by RCW 4.24.115, as now enacted or as hereinafter amended.

Developer's obligations under this Section 15 shall include, but not be limited to:

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

(ii) 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 the City only, with a full and complete indemnity and defense of claims made by Developer's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

(iii) To the maximum extent permitted by law, Developer shall indemnify and defend City from and be liable for all damages and injury which shall be caused to City property in the vicinity of the construction of the Project or which shall occur to any person or persons or property whatsoever arising out of this Agreement, whether or not such injury or damage is caused by negligence of the Developer or caused by the inherent nature of the construction of the Project.

(iv) In the event the City incurs any judgment, award, and/or costs arising therefrom, including attorneys fees, to enforce the provisions of this Section, all such reasonable fees, expenses, and costs shall be recoverable from the Developer.

Notwithstanding the provisions contained in this subsection above, Developer's obligation to indemnify City shall not extend to any claim, demand or cause of action arising or in connection with the negligence, intentional acts or breach of this Agreement by City, Trustee, or their respective agents or employees.

(b) City's Indemnification. If prior to Final Acceptance, City exercises its rights to enter upon the Project and occupy any portion of the Project, City shall protect, defend, indemnify, and save harmless Developer, Trustee, Bond Insurer and their respective officers, officials, employees, and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever (hereinafter "claims"), arising out of or in any way resulting from City's negligence to the maximum extent permitted by law.

Notwithstanding the previous paragraph contained in this subsection above, City's obligation to indemnify Developer shall not extend to any claim, demand or cause of action arising or in connection with Developer's negligence, intentional acts or breach of this Agreement.

(c) Notice of Claim. Any party making a claim for indemnification pursuant to this Section 15 (an "Indemnified Party") must give the party from whom indemnification is sought (an "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 by a government entity or other third 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 an Indemnifying Party will not relieve the Indemnifying Party of its obligations pursuant to this Section 15 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).

16. Insurance Requirements.

(a) Developer's Insurance. By the date of the execution of this Lease Agreement, Developer shall procure and maintain, at a minimum, for the duration of this Agreement the following insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the performance of work hereunder by the Developer, its agents, representatives, employees and/or subcontractors. The cost of such insurance shall be paid by the Developer or its subcontractor. Coverage shall be at least as broad as:

(i) General Liability: Insurance Services Office form number (CG00 001) covering Commercial General Liability, with a limit of not less than; \$5,000,000 combined single limit per occurrence, \$5,000,000 aggregate.

(ii) Automobile Liability: Insurance Services Office form number (CA 00 01) covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, with a limit of not less than; \$1,000,000 combined single limit per occurrence.

(iii) Workers' Compensation: Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, statutory limits.

(iv) Employer's Liability or "Stop Gap": The protection provided by the Workers' Compensation Policy, Part 2 (Employer's Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability Policy in the amount of at least \$1,000,000.

During the period of construction, Developer as construction manager shall also provide:

(v) Builders Risk Insurance: Insurance Services Office form number (CP 00 02 Ed. 10-90) Builders All Risk Coverage Form covering all work to be done on the Property for the full 100% replacement cost of all such improvements. Coverage shall be provided for (i) the perils of earth movement and flood; (ii) resultant damage from errors in design, plans, specifications, faulty workmanship, materials and construction; (iii) "extra expense"; (iv) all materials to be stored offsite and while in transit to the jobsite; (v) "cold testing" of all building systems; (vi) City's and Developer's loss of use of the Property due to delays in Project completion caused by covered peril losses to the Project, including loss of income and rents and soft costs such as interest on the Certificates of Participation, real estate taxes and insurance premiums; (vii) the increased cost of construction, debris removal and demolition due to the operation of building laws and code upgrades; and (viii) direct

physical damage to the Project and loss of use caused by an off premises power interruption. Coverage shall not be provided for City's Personal Property and art not installed by the General Contractor. The policy shall include a waiver of subrogation provision, shall grant permission for partial occupancy of the facilities without having a detrimental affect on the coverage provided, and shall contain a separate debris removal limit of liability which is separate from, in addition to, and not part of the overall policy limit of liability. Notwithstanding the foregoing in this Section 16(b), Developer shall have the required Builder's Risk Policy in place no later than Commencement of Construction. The Builder's Risk Policy shall include Developer, General Contractor and its subcontractors, other Contractors, and City as insureds in an amount equal to their interest with a loss payable clause in favor of Trustee. Developer shall keep the Builder's Risk Policy in place from Commencement of Construction to the Commencement Date defined in the Building Lease.

(b) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. The deductible and/or self-insured retention of the policies shall be the sole responsibility of Developer.

(c) Other Insurance Provisions. The insurance policies required by this Agreement are to contain or be endorsed to contain the following provisions where applicable:

(i) Liability Policies:

(A) City, their officers, officials, employees and agents are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Developer in connection with this Agreement.

(B) Developer's insurance coverage shall be primary insurance as respects City, their officers, officials, employees and agents. Any insurance and/or self-insurance maintained by City its officers, officials, employees and/agents shall not contribute with Developer's insurance or benefit Developer in any way.

(C) 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.

(ii) All Policies. Coverage shall not be canceled until after forty-five (45) days' (10 days' for non-payment) prior written notice has been given to City.

(iii) Acceptability of Insurers.

(A) Unless otherwise approved by City and, insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's, with minimum surpluses the equivalent of Best's surplus size VIII.

(B) If, at anytime, any of the foregoing policies shall fail to meet the above minimum standards, Developer shall, upon notice to that effect from City, promptly obtain a new policy, and shall submit the same to City, with certificates and endorsements, for approval.

(iv) Verification of Coverage. Developer shall 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. The certificates are to be on standard insurance industry Acord form 25-S with required endorsements attached and are to be received and approved by City prior to the commencement of activities associated with this Agreement. City reserves the right to require Developer to deliver complete certified copies of all required policies at any time.

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

(vi) For All Coverages.

(A) 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.

(B) 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 years from the date of completion of the work which is subject to said insurance.

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

(D) 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 Lease Agreement.

(d) Verification of Coverage. The Developer shall furnish the 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 reasonably approved by the City and are to be received and approved by the City prior to the commencement of activities associated with this Agreement. The City reserves the right to require complete certified copies of all required policies at any time.

(e) Subcontractors. The Developer shall include all subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein (provided builders risk coverage must be carried only by the General Contractor).

17. Representatives.

(a) Developer Representatives. Developer shall consult with City on initial assignments of personnel assigned to the Project. City agrees that the persons with overall responsibility for the work for the Project for the Developer shall be Bernie O'Donnell, Sr. Project Manager. The Project Manager shall be Mike Panek. Developer shall have the right to approve any changes in the personnel named above, such approval not to be unreasonably withheld.

(b) City Representative. City designates Jesus Sanchez, Project Manager as City's Representative authorized to act on the City's behalf with respect to the Project. City shall promptly render decisions to avoid delay in the orderly process of design and construction of the Project. City shall communicate with the Contractor and the Architect only through Developer. City's Representative may be changed by City from time to time.

18. Accounting, Inspection and Audit.

(a) Accounts. Developer shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement.

(b) Inspection and Audit. City may, at its sole discretion, from time to time whether before or after Final Acceptance or termination of this Agreement inspect all books and records of Developer or any Contractor relating to the Project and/or elect to have an audit conducted to verify Project Costs through the date of the latest progress payment. If City so elects to conduct such an audit, it shall give notice to Developer, and such audit shall be conducted as soon as is reasonably feasible thereafter, but progress payments to Developer shall not be delayed pending the outcome of the audit. Such audit shall be conducted by an auditor selected by City, and City shall, except as hereinafter provided, pay the cost of such audit. Developer agrees to cooperate with the auditor and make available for examination at its principal office all of its books, records, correspondence and other documents deemed necessary to conduct the audit by the auditor. If the audit reveals a variation of one percent (1%) or more of the then Project Costs, Developer shall pay the cost of the audit, not to exceed \$10,000.

(c) Preservation of Records. Developer shall preserve all records for a period of six (6) years after Final Payment hereunder; provided, however, if at any time prior to the expiration

of seven (7) years after Final Payment, Developer proposes to dispose of any Contract Documents related to the Project, Developer shall deliver the same to City for disposition by City.

19. Construction Liens. Upon Final Acceptance 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. If at any time there shall be appropriate evidence of any lien or claim for which, if established, City shall be liable, or which would constitute a lien on the Project, and which is chargeable to Developer or one of its subcontractors, upon written request by City, Developer shall furnish a bond in form and amount satisfactory to remove such lien from the public records. If any potential lien claimant gives notice to Trustee in accordance with the provisions of RCW 60.04.221, there shall be no further disbursement of Bond proceeds until Developer shall have provided Trustee and City with a bond or other security in accordance with RCW 60.04.221(5), to the amount claimed under the lien or notice until resolution of such dispute and payment of such lien, agreement with such potential lien claimant that such notice is withdrawn, or a court declaration that such notice is void in accordance with the provisions of RCW 60.04.221(9). Developer shall notify City and Trustee upon the filing of any lien or the service of any notice in connection with the Project.

20. Priority Agreements. Developer shall subordinate its lien rights, by agreement in form and substance satisfactory to City, to the lien of any security interest securing the Certificates of Participation in favor of Trustee and Bond Insurer and their respective successors or assigns, and shall use its best efforts to obtain a similar subordination from all subcontractors under this Agreement. Any subcontractor which refuses to so subordinate its lien rights must be specifically approved in writing by City.

21. Damage and Destruction; Condemnation.

(a) Damage and Destruction. After the happening of any casualty to the Project, Developer shall give City and Trustee 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 and City acknowledge, agree and assign all insurance proceeds which Developer or City may be entitled to receive prior to Final Acceptance of the Project with respect to damage or destruction to the Project to Trustee for deposit into the Project Fund held by Trustee under the Trust Agreement, and the insurance carrier is hereby irrevocably instructed in accordance herewith. Such insurance proceeds shall be used to pay Project Costs, including increases in the Project Costs caused by such casualty. If, prior to the Substantial Completion of the Project, damage or destruction occurs to the Project, Developer shall proceed diligently to reconstruct and restore the Project in accordance with the Contract Documents and the provisions of this Agreement. Insurance proceeds deposited in the Project Fund shall be disbursed to Developer for payment of the costs to repair and restore the Project. All costs of such repair or restoration of the Project exceeding the amount of the insurance proceeds shall be paid by Developer.

(b) Condemnation. In the event of a partial condemnation of the Project to the extent that the Project may still be constructed in accordance with the Contract Documents, or may be constructed in accordance with the Contract Documents as modified by changes acceptable to City and Developer, Developer shall proceed diligently to construct the Project in accordance with

the Contract Documents, as modified, if applicable. Any such partial condemnation proceeds shall be deposited in the Project Fund and disbursed in accordance with this Agreement. Condemnation proceeds shall be disbursed for such purposes whether or not such disbursements exceed the Lease Transfer Amount. In the event of a condemnation of all of the Project or so much thereof that the Project may no longer be constructed in accordance with the Contract Documents, this Agreement shall terminate, Developer shall be paid for all costs incurred as of the date of such condemnation (including costs that Developer is obligated to pay third parties as of that date, together with a prorata portion of the Developer's Overhead and the Developer's Fee), and the parties shall have no further obligations hereunder. In such event, after Developer has been paid in accordance with the foregoing sentence, all condemnation proceeds shall be paid applied by the Trustee pursuant to the Trust Agreement.

(c) Other State and Local Taxes. Developer shall pay any and all state and local taxes assessed in connection with the Project other than real property taxes and assessments including, but not limited to, state and local retail sales taxes and business and occupation taxes as part of the Lease Transfer Amount. Developer shall complete all necessary tax returns relating to such taxes and file the same with the applicable state or local governmental agency and remit, on or before the date such tax payment is due, payment of such state and local taxes to the proper taxing authority.

22. Default.

(a) Developer Default. The following events shall constitute an "Event of Default" by Developer:

(i) If Developer shall fail to perform any material obligation under this Agreement;

(ii) If Developer persistently or repeatedly refuses or fails to cause to be supplied to the Project enough properly skilled workers or proper materials to complete the Project, including Tenant Improvements, or if Developer ceases work on the Project for a period of fourteen (14) consecutive days (subject to Unavoidable Delays);

(iii) If Developer misappropriates any funds received by Developer pursuant to the provisions of this Agreement;

(iv) If Developer persistently disregards and fails to comply with laws, ordinances or rules, regulations or orders of a public authority having jurisdiction over the Project.

(v) If, due to the actions of Developer, any Permit required for construction of the Project shall be revoked or canceled;

(vi) If there shall occur any lien or other encumbrance on the Building Land or the Project caused by Developer which is not bonded and removed in accordance with Section 19 above;

(vii) If there shall have occurred defective workmanship or materials within the Project which is not cured within the time period provided in Section 7 of this Agreement;

(viii) If Developer shall have assigned, pledged or encumbered its rights, duties or obligations under this Agreement in violation of Section 24 of this Agreement;

(ix) If any warranty made by Developer as set forth in Section 13 shall be untrue or breached in any material respect; or

(x) If Developer files a petition for bankruptcy or if it 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 sixty (60) days.

(b) 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 fifteen (15) days within which to commence all necessary action to cure any such Event of Default. If such cure is commenced, proceed to diligently complete such cure within a reasonable period of time not to exceed 60 days, except with respect to Events of Default set forth in Section 22(a)(iii) and (viii) for which the cure period shall be five (5) business days, or Section 22(a)(x) for which no cure period exists beyond the time period stated therein; provided however, that such cure period shall not apply to failure of Developer to achieve Substantial Completion of the Project on or before the Developer Obligation Date for the Project. In the event Developer fails to cure such Event of Default within the time period set forth above, City shall be entitled to the following remedies:

(i) To take over and complete the Project. City is hereby irrevocably appointed attorney-in-fact (the appointment being coupled with an interest) to incur obligations, enforce contracts or agreements theretofore made by Developer and to do any and all things that are necessary and proper to complete the Project and be entitled to use the undisbursed Project Fund proceeds to pay Project Costs;

(ii) In addition to a claim for damages for such breach or default, and in addition to and without prejudice to any other right or remedy available under this Agreement or at law or in equity, the right to demand specific performance of this Agreement;

(iii) To withhold approval of further disbursement of Bond proceeds;

(iv) Bring an action for damages; or

(v) Terminate this Agreement without liability upon ten (10) days written notice.

(c) City Default. The following shall constitute an "Event of Default" by City:

(i) City fails to cause Trustee to make disbursements to Developer of any sum of money owed to Developer pursuant to this Agreement as and when due, including without limitation, all monies due and owing from the Project Costs Account unless Developer shall have committed an Event of Default as set forth in Section 22(a) above;

(ii) City shall have assigned, pledged or encumbered its rights, duties or obligations under this Agreement in violation of Section 24; or

(iii) City shall have failed to perform any other material obligation under this Agreement.

(d) Developer Remedies Upon City Event of Default. Upon any Event of Default by City, City shall give City written notice of the same. Upon receipt of such written notice City shall have ten (10) business days to cure any such Event of Default. In the event City fails to cure such Event of Default within said 10 day period, Developer shall be entitled to stop all work relating to the Project; if Developer so desires and shall further be entitled to pursue its rights and remedies at law and in equity under this Agreement, including without limitation, specific performance of City's obligations hereunder.

(e) Remedies Not Exclusive. No remedy conferred upon either party in this Agreement is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

23. Disputes. City and Developer agree to follow the independent resolution process set forth in this Section 23 to resolve disputes regarding preparation of the Construction Drawings and Detailed Specifications and changes to Construction Documents in an economic and time efficient manner so that such documents conform to the requirements of this Agreement, the Project Schedule is not adversely impacted, and the Project as constructed will satisfy the Project Requirements. In the event that a dispute arises between City and Developer during the design or construction of the Project regarding the adequacy of any Drawings or Specifications or the responsibility for any costs associated with any design development, addition or change (e.g., whether any design development is consistent with and reasonably inferable from the Project Requirements), the parties shall attempt to resolve such dispute as expeditiously as possible and shall cooperate so that the progress of the design and construction of the Project is not delayed. If, however, the parties are unable to resolve the dispute within three (3) business days, either party may, by delivering written notice to the other and the Bond Insurer, refer the matter to a dispute resolution mediator as set forth on the attached Exhibit H.

24. Miscellaneous.

(a) 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.

(b) 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.

(c) Severability. If any portion or portions of this Agreement is declared void or unenforceable, it shall not affect the other provisions of this Agreement.

(d) 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. Nothing herein shall be construed as reserving to City the right to control Developer's business.

(e) No Third Party Rights. The provisions of this Agreement are intended solely for the benefit of, and may only be enforced: (i) by the parties hereto and their respective successors and assigns, including, as to City, Trustee and Bond Insurer. 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, architect, 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.

(f) Assignment; Encumbrance or Pledge. Neither this Agreement nor any rights or duties hereunder nor any benefits derived herefrom may be assigned, delegated, pledged or encumbered to any other person or entity by either party hereto without the express written consent of the other, which consent may be withheld by either party in the exercise of its absolute discretion, except that City may assign its rights under this Agreement to the Trustee and the Bond Insurer pursuant to the Trust Agreement as security in connection with the financing described in Section 3 above.

(g) 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 with received invoice followed by a "hard copy" mailed, regular mail, within one (1) business day to the fax number listed as follows:

City: City of Shoreline
Attn: Jesus Sanchez, Civic Center Project Manager

17544 Midvale Avenue North
Shoreline, WA 98133-4921
Phone (206)546-2519
Fax (206)546-0780

Developer:

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.

A copy of all notices, plans and specifications, change orders, invoices, documents or other agreements required to be delivered by one party to the other pursuant to this Agreement shall be simultaneously sent to City and Bond Insurer at their addresses set forth below and City shall have the right, but not the obligation, to attend all meetings and participate in all decisions to protect its leasehold interest under the Lease.

Bond Insurer: [To be provided if applicable.]
Attn: _____

Facsimile: _____

(h) Entire Agreement. This Agreement (and the exhibits referred to herein) constitute the entire agreement between the parties with respect to the subject matter hereof and may be amended only in writing signed by both parties.

(i) Time is of the Essence. Time is of the essence of this Agreement.

(j) Employees of Developer. 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. Developer shall maintain all required industrial and worker's compensation insurance for all employees of Developer and shall cause all Contractors, Architect and all design professionals and other persons, firms and corporations employed to perform services in connection with the Project to provide worker's compensation and similar insurance with respect to their respective employees.

(k) Exhibits. The Exhibits to this Agreement are:

<u>Exhibit</u>	<u>Description</u>	<u>Partial Section Reference</u>
A	Legal Description of Building Land	Recitals
B	Lease Agreement	Recitals; Section 1
C	Base Shell and Core Building	Section 1
D	Project Budget	Sections 1, 4(c)
E	Schedule of Preliminary Plans and Specifications	Section 1
F	Project Schedule	Sections 1, 6(c)
G	Tenant Improvement Plans Delivery Date Schedule	Sections 2(b), 6(c)
H	Dispute Resolution Mediation	Section 23
I	List of Additional Warranties	Section 7(h)

DATED at Shoreline, Washington the day and year first above written.

DEVELOPER: _____,

By: _____
Its: _____

CITY:

By: _____
Its: _____

APPROVED AS TO FORM:

By: _____
Ian Sievers, City Attorney

Exhibit A

Legal Description of Building Land

Tax Parcels 031810046, 031810036, 031810055 and a portion of 031810040 described as :

AUTOMOBILE ADD UNREC BAAP ON NLY MGN OF N 175TH ST-50 FT NLY OF C/L OF SD ST - SD PT BEING N 89-06-00 W 377.00 FT FR W LN OF PLAT OF RONALD TERRACE TH N 00-53-00 E 100 FT TO TPOB TH N 89-06-00 W 112.35 FT TO W LN BLK 9 SD UNREC PLAT TH N 12-04-00 W 186.52 FT TO N LNS 1/2 OF S 1/2 OF SW 1/4 OF NE 1/4 STR 07-26-04 TH S 89-06-00 E 214.20 FT TH S 00-53-00 W 126.78 FT TH N 89-06-00 W 60 FT TH S 00-53-00 W 55 FT TO TPOB

AUTOMOBILE ADD UNREC E 37.18 FT OF 3 ALL 4 & W 74.82 FT OF 7 & POR OF 8-9 NLY & ELY OF LN BEG ON N OF 8 DIST 214.20 FT E OF NW COR TH S 00-53-00 W 126.78 FT TH E TO W LN OF 7 TGW E 77.18 FT OF S 88.15 FT OF 9

AUTOMOBILE ADD UNREC ALL 1-2 & 3 LESS E 37.18 FT & S 33.15 FT OF TR 9 LESS E 77.18 FT LESS CO RDS

AUTOMOBILE ADD UNREC E 225 FT LESS S 120 FT OF W 100 FT LESS CO RD

LESS the area of Tax Parcel 031810040 depicted in Exhibit A-1.

Exhibit A-1

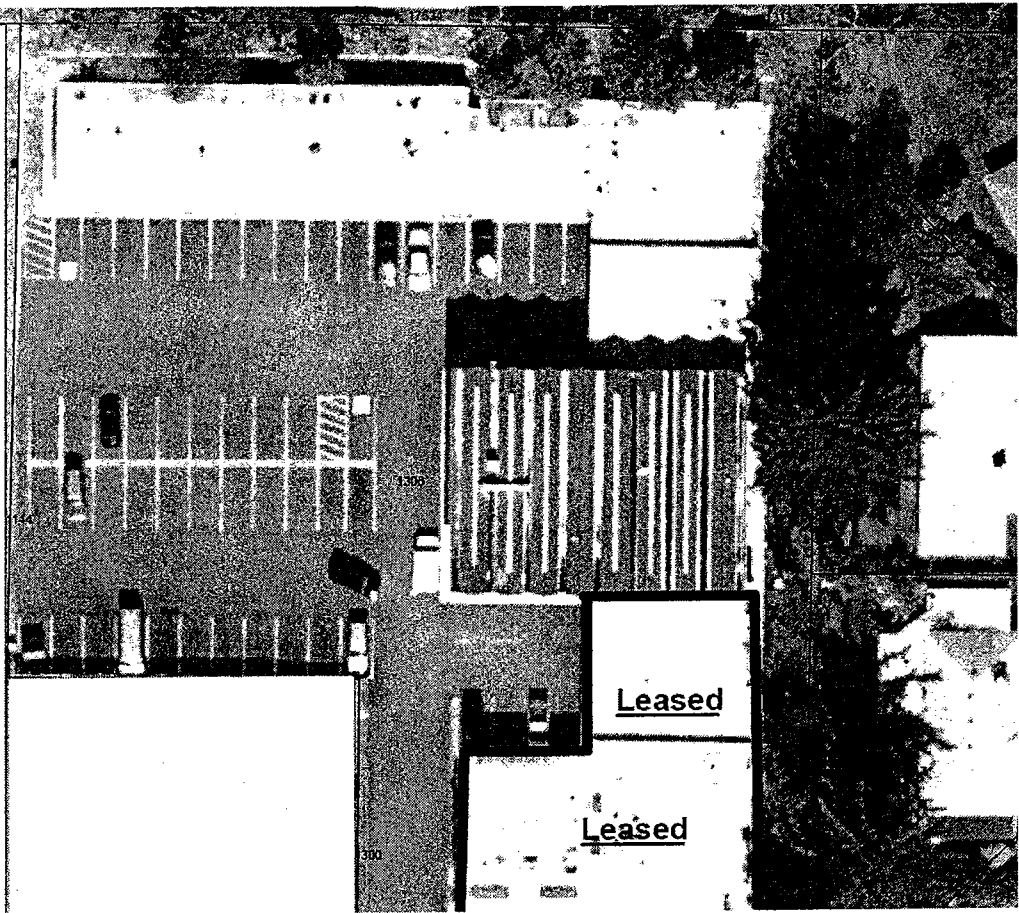


EXHIBIT B

Building Lease Agreement

BUILDING LEASE WITH OPTION TO PURCHASE AND PROPERTY TRANSFER AGREEMENT

by and between
OPUS NORTHWEST, LLC
and the
CITY OF SHORELINE, WASHINGTON

THIS BUILDING LEASE WITH OPTION TO PURCHASE AND PROPERTY TRANSFER AGREEMENT ("Lease") is made as of this _____ day of _____, 200__, by and among Opus Northwest LLC (the "Developer"), as Lessor, and the City of Shoreline, a code city of the state of Washington (the "City"), as Lessee.

WITNESSETH:

1. The City owns approximately 2.78 acres of real property located in the City, as more fully described in the Development Agreement (the "Agreement").
2. The Developer has undertaken significant responsibilities and risks associated with developing and constructing a City Hall and associated public facilities (the "Project") on the property described above.
3. The Agreement is authorized by Chapter 35.42 RCW.
4. In consideration of the Developer designing and building the Project and providing other valuable consideration, the City has deemed it to be in the best interest of the City to lease with an option to purchase the Project from the Developer.
5. The City determined that the value of the physical assets to be leased by the City significantly outweigh the amount to be invested by the City by leasing the improvements.
10. By Resolution No. 266, the City authorized the execution of this Lease.
11. The Project has been constructed at no cost to the City.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions hereinafter contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following terms shall have the respective meanings set forth below for all purposes of this Agreement.

“Development Contract” means any contract, agreement or license, written or oral, to which the Developer, its Contractor(s) or subcontractors or their respective agents and employees is a party in connection with the construction of the Project.

“Exercise Notice” means written notice, provided to the Lessor in accordance with Section 3.13(b), of the City’s election to exercise the Option.

“Lease” means this Lease with Option to Purchase and Property Transfer Agreement.

“Lease Transfer Date” means September 1, 2009.

“Leasing Date” means the date of this Lease.

“Option” means the irrevocable, exclusive option to purchase the Project granted to the City in Section 3.13 of this Lease.

“Option Term” has the meaning given in Section 3.13(a) of this Lease.

“Premises” means the ground lease and “Building” which is more specifically described in the Agreement between the parties, which is incorporated herein by reference.

“Purchase Price” means the price identified in Section 3.13(c) of this Lease.

All other capitalized terms used and not otherwise defined in this Lease shall have the meanings assigned them in the Agreement.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.1 The Developer represents and warrants as follows:

(a) *Authority.* The Developer is authorized to enter into this Lease and to convey the Premises, and the person executing this Lease on behalf of the Developer is authorized to do so.

(b) *Title.* The Developer owns the Building and holds a ground lease for the Building, subject only to the exceptions, if any, set forth in Attachment ____, attached hereto and by this reference incorporated herein and subject to the terms and conditions of the Agreement.

(c) *Substantial Completion of Building.* The Building has reached Substantial Completion and is being maintained in accordance with the Agreement.

(d) *Notice.* The Developer has designated the Leasing Date consistent with the requirements of the Agreement.

(e) *Encumbrances.* As of the Leasing Date, the Premises have been reconveyed from any lien created in connection with any of Developer's loan documents, and all security interests in the Premises under any such loan documents have been terminated and evidence thereof has been deposited with the Escrow Holder.

(f) *Claims.* Having conducted a reasonable investigation, as of the Leasing Date, the Developer certifies that the Project is free and clear of any mortgage, lien, demand, invoice, obligation, penalty, charge, expense, claim, or dispute that may ripen into a claim of any kind whatsoever (including without limitation claims regarding death, injury, sickness, or property damage) of which the Developer is or should be aware after such investigation, arising by or through the actions of the Developer, its Contractor(s) or subcontractors or their respective agents and employees, except as disclosed in Attachment _____ to this Lease.

(g) *Escrow.* The Developer has deposited with the Escrow Holder all documents and funds required to be so deposited by the Developer under the Agreement.

(h) *No Default.* The Developer is not in default under the Agreement or any loan documents. The Developer has complied with all provisions applicable to it under the Agreement and any such loan documents.

2.2 City Representations and Warranties: The City represents and warrants as follows:

(a) *Authority.* The City is authorized to enter into this Lease, and the person executing this Lease on behalf of the City is authorized to do so.

(b) *Escrow.* The City has deposited with the Escrow Holder all documents and funds required to be so deposited by the City under the Agreement.

(c) *No Default.* The City is not in default under the Agreement. As of the Leasing Date, the City has complied with all provisions applicable to it under the Agreement.

ARTICLE 3. LEASE

3.1 Creation of Lease. The Lessor hereby leases to the City the Premises upon the terms and conditions set forth in this Lease. This Lease shall commence on the Leasing Date, and shall terminate thirty (30) years from Leasing Date unless earlier terminated in accordance with the terms and provisions of this Lease or the Agreement.

3.2 Possession. From and after the Leasing Date, the City may have possession and use of the Project for public use. The City, upon fully complying with and promptly performing

all of the terms, covenants and conditions of this Lease on its part to be performed, shall have and quietly enjoy the Project for the term of this Lease.

3.3 Rental Payments.

(a) *Components.* The principal component of the rental payments is set forth in Attachment ____ to this Lease and by this reference incorporated herein. The aggregate principal component of the rental payments shall equal the Lease Transfer Amount. The interest component of the rental payments, representing interest on the principal component of the rental payments, together with the amortization of the principal component, is set forth in Attachment ____ to this Lease and by this reference incorporated herein.

(b) *Pledge.* The City shall make all rental payments at the times and in the amounts set forth in Attachment _____. The obligation of the City to make rental payments constitutes a limited tax general obligation of the City. The City hereby pledges irrevocably to include in its budget and levy taxes annually, within the constitutional and statutory limitations provided by law without a note of the electors of the City, on all of the taxable property within the City in an amount sufficient, together with other money legally available and to be used therefore, to pay when due the rental payments. The full faith, credit and resources of the City are irrevocably pledged for the annual levy and collection of such taxes and the prompt payment of the rental payments.

(c) *Tax Exemption.* The Lessor and the City intend that the interest component of the rental payments hereunder shall be excluded from gross income for federal income tax purposes. The Lessor and the City hereby each covenant that they will not make any use of the Project that would cause this Lease or the Certificates of Participation to be treated as an "arbitrage bond" within the meaning of Section 148(a) of the Code at the time of such use. The City shall comply with the applicable requirements of Section 148(a) of the Code and the applicable regulations thereunder throughout the term of the Lease. The Lessor and the City each covenant that they will not act or fail to act in a manner that will cause the Lease or the Certificates of Participation to be considered an obligation not described in Section 103(a) of the Code. The Lessor and the City each further covenant that they will take no actions that would cause the Lease or the Certificates of Participation to be treated as a "private activity bond" as defined in Section 141 of the Code then in effect.

(d) *Additional Rent.* During the term of this Lease, the City shall pay as additional rent trustee's fees and expenses in connection with the issuance of Certificates of Participation and all taxes and assessments on the Property Interests for which the City is liable. Due to the contingent nature of such additional rent, it shall not constitute debt of the City for purposes of debt limitations established by RCW 39.36.020.

(e) *Defeasance.* In the event that money and/or "Government Obligations," as now or hereafter defined in Chapter 39.53 RCW, maturing at such time or times and bearing interest to be earned thereon in amounts sufficient to pay or prepay all rental payments due under this Lease in accordance with the terms of this Lease, are irrevocably set aside and pledged in a special

account to effect such payment or prepayment, then no further payments need be made of any rental payments under this Lease, and the Lessor shall not be entitled to any lien, benefit or security in the Project, except the right to receive the funds so set aside and pledged.

(f) Prepayment. The City may prepay the principal component of the rental payments, in \$5,000 increments, in whole or in part, on any date. The City shall give notice of any such prepayment to the Lessor in writing not less than three (3) days in advance of the intended prepayment date and not less than sixty (60) days if Certificates of Participation have been issued. Upon such prepayment, the term of this Lease shall be deemed modified such that this Lease terminates on the payment date for the last outstanding rental payment not prepaid.

3.4 Absolute Net Lease. This Lease is an "absolute net lease." As between the City and the Lessor, the City assumes the sole responsibility, and the Lessor shall have no responsibility, for the condition, use, maintenance and repair of the Project after the Leasing Date. The City will, at its cost and expense, keep and maintain the Project in good repair and condition, reasonable wear and tear and ordinary use excepted. Nothing in this Section 3.5 shall diminish any of the City's rights under warranties received pursuant to the Agreement.

3.5 Lease Nonterminable. Except as otherwise expressly provided in this Lease, this Lease shall not terminate, nor shall the City have any right to terminate this Lease or to be released or discharged from any obligations or liabilities hereunder for any reason, including without limitation damage or destruction of the Project, it being the intention of the parties hereto that all rental payments payable by City hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. In that connection, City hereby waives, to the extent permitted by applicable law, any and all rights that it may now have or that may at any time hereafter be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms of this Lease and agrees that if, for any reason whatsoever, this Lease shall be terminated in whole or in part by operation of law or otherwise except as specifically provided in this Lease, the City nevertheless will pay to the Lessor an amount equal to each rental payment at the time such payment would have become due and payable in accordance with the terms hereof had such termination not occurred.

3.6 Default. In the event that (a) the City fails to make when due any rental payments or additional rent payments or (b) the City defaults in the performance or observance of any of the other terms, covenants, conditions or agreements of this Lease, which default is not cured within thirty (30) days after written notice and demand, or if such default shall be of such a nature that the same cannot practicably be cured within said thirty (30) day period and City shall not within said thirty (30) day period commence with due diligence and dispatch the curing and performance of such defaulted term, covenant, condition or agreement, or if City shall within said thirty (30) day period commence with due diligence and dispatch to cure and perform such defaulted term, covenant, condition or agreement and shall thereafter fail or neglect to prosecute and complete with due diligence and dispatch the curing and performance of such defaulted term, covenant, condition or agreement; then and in any such case, at the Lessor's option and in addition to all other rights or remedies the Lessor may, following the expiration of the cure

period, if any, provided herein for such default, immediately declare the City's rights under this Lease terminated, and re-enter the Project, using such force as may be necessary, and repossesses itself thereof, as of its former estate, and remove all persons and property from the Project. Notwithstanding any such re-entry, the liability of the City for the rental payments at such times and in such amounts provided for herein by Attachment D-1 and D-2 shall not be extinguished for the balance of the term of this Lease.

3.7 Compliance with Laws. The City shall at all times during the term of this Lease at the City's own cost and expense, perform and comply with all laws, rules, orders, ordinances, regulations and requirements, now or hereafter enacted or promulgated, of every government and municipality having jurisdiction over the Project and of any agency thereof, relating to the Project, whether or not such laws, rules, orders, ordinances, regulations or requirements so involved shall necessitate structural changes, improvements, interference with use and enjoyment of the Project, and the City shall so perform and comply, whether or not such laws, rules, orders, ordinances, regulations or requirements shall now exist or shall hereafter be enacted or promulgated, and whether or not such laws, rules, orders, ordinances, regulations or requirements can be said to be within the present contemplation of the parties hereto.

3.8 City's Right to Contest. The City shall have the right to contest, by appropriate legal proceedings, any tax, charge, levy, assessment, lien or other encumbrance, and/or any law, rule, order, ordinance, regulation or other governmental requirement affecting the Project, and to postpone payment of or compliance with the same during the pendency of such contest, provided that: (a) the City shall not postpone the payment of any such tax, charge, levy, assessment, lien or other encumbrance for such length of time as shall permit the Project, or any lien thereon created by such item being contested, to be sold by any federal, state, county or municipal authority for the non-payment thereof; (b) the City shall not postpone compliance with any such law, rule, order, ordinance, regulation or other governmental requirement if the Lessor will thereby be subject to criminal prosecution, or if any municipal or other governmental authority shall commence a process according to applicable law to carry out any act to comply with the same or to foreclose or sell any lien affecting all or part of the Project which shall have arisen by reason of such postponement or failure of compliance; (c) the City shall proceed diligently and in good faith to resolve such contest; (d) such contest shall be in compliance with all laws, rules, orders, ordinances, regulations or other governmental requirements; and (e) the City shall not postpone compliance with any such laws, rules, orders, ordinances, regulations or other governmental requirements if the same shall invalidate any insurance required by this Lease.

3.9 Liability Insurance. During the term of this Lease, the City shall maintain, or cause to be maintained, in full force and effect, comprehensive public general liability insurance covering the Project in such amounts as may be established by the City from time to time. The City may provide all or a portion of any insurance by self insurance. It is understood that this insurance covers any and all liability of the City and its officers, employees and agents, and the procurement thereof does not constitute a waiver of the defense of governmental immunity.

3.10 Liens. The City shall not create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Project. The City shall

promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The City shall reimburse the Lessor for any expense incurred by Lessor (including reasonable attorneys' fees) to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim incurred by the City.

3.11 Option to Purchase. The Lessor hereby grants the City an irrevocable, exclusive option to purchase the Project ("Option") from the Lessor pursuant to the following terms.

(a) *Term.* The term of the Option ("Option Term") shall commence on the Leasing Date and terminate upon the termination of this Lease.

(b) *Notice.* The City may exercise the Option at any time during the Option Term by giving Exercise Notice to the Lessor at least sixty (60) days prior to the City's chosen closing date. The Exercise Notice shall specify the City's chosen closing date. The Lessor may in writing waive or reduce the length of the Exercise Notice.

(c) *Purchase Price.* The Purchase Price for the Project upon exercise of the Option, including the consideration for all Property Interests to be received by the City, shall be _____; provided, that all rental payments and other sums, including the Lease Transfer Amount, paid as rent to the Lessor up to the time of exercising the Option shall be credited toward the payment of the Purchase Price as of the date of payment. Payment of any portion of the Purchase Price by any person or entity other than the City shall be of no effect under this Lease.

(d) *Closing.* The closing shall occur on the date specified by the City in the Exercise Notice. At the closing, the Lessor shall convey the Building to the City by special warranty deed, together with an assignment of its interest in the Premises ground lease, and this Lease shall terminate.

(e) *Option Not Exercised.* If the City does not exercise the Option upon termination of this Lease, then, after giving the City ninety (90) days' written notice, Lessor may sell the Project to a third party, but only to a third party permitted under the Agreement. The Lessor shall remit to the City the proceeds from such sale, less the Lessor's costs in connection with the sale.

This Lease is not intended nor shall it be construed to provide that the City is under any obligation to purchase the Project.

3.12 Eminent Domain.

(a) *Total Taking.* If all of the Project is taken by eminent domain, then the City shall defease its rental payment obligations, the parties shall have no further obligations to each other, and this Lease shall terminate.

(b) *Partial Taking.* If there is a partial taking of the Project by eminent domain, this Lease shall not terminate and there shall be no abatement of rental payments otherwise payable

by the City hereunder. The City may either retain any condemnation proceeds or apply them to replace all or any portion of the rental payments.

(c) *Insufficiency of Award.* If the condemnation award is insufficient to pay in full the cost of any rental payments or any repair, restoration, modification or improvement of any component of the Project, the City may, subject to appropriation of sufficient funds, complete the work and pay any cost in excess of the amount of the condemnation award. The City shall not be entitled to any reimbursement therefore from the Lessor, nor shall the City be entitled to any abatement of any rental payments or additional rent otherwise payable hereunder.

(d) *Cooperation of the Lessor.* The Lessor shall cooperate fully with the City at the expense of the City in filing any proof of loss with respect to any insurance policy and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Project and to the extent it may lawfully do so, authorizes the City to litigate in any proceeding resulting therefrom in the name of and on behalf of the Lessor. In no event will Lessor voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Project without the written consent of the City.

3.13 Destruction of the Project. In the event the Project is damaged or destroyed by casualty during the term of this Lease, this Lease shall not terminate nor shall there be any abatement of the rental payments or additional rent otherwise payable by City hereunder. The City may elect to defease or prepay the rental payments in accordance with this Lease.

3.14 Surrender. The City shall promptly yield and deliver to Lessor possession of the Project upon the termination of this Lease in accordance with its terms, unless the City purchases the Project.

3.15 Assignment.

(a) *Lessor.* The Lessor's right, title and interest in and obligations and duties under this Lease, including the right to receive and enforce payment of the rental payments to be made by the City under this Lease, may be assigned and reassigned in accordance with the terms of the Agreement, and to third parties permitted by the Agreement, subject to prior written consent of the City; provided, however, that Lessor's assignment to a trustee in connection with the Certificates of Participation in the form set forth on Attachment E attached hereto and incorporated herein by this reference is hereby permitted and consented to by the City. Such assignment shall occur immediately upon execution of this lease by the Developer and the City, and all rights and obligations of the Developer under this lease shall be immediately transferred to Trustee. The City hereby expressly acknowledges and consents to the execution and delivery of the Certificates of Participation. Assignment of this Lease by the Lessor shall be "without recourse" to the Lessor, and the City shall forever waive, discharge, and indemnify (including reasonable attorneys' fees and costs) the Developer from any and all claims, demands, liabilities, or causes of action arising out of, or relating to, the Project Lease after the Leasing Date. Any Trust Agreement shall require the Trustee to state in any Certificates of Participation issued or

executed by the Trustee that such certificates are issued or executed without recourse to the Lessor.

(b) City. This Lease may be assigned by the City provided, however, that the City shall remain obligated to make the rental payments and additional rent payments hereunder notwithstanding any obligation that an assignee may assume; and provided further that the City shall first obtain an opinion from bond counsel that such assignment will not have an adverse effect on the tax-exempt status of the interest component of the rental payments.

ARTICLE 4. MISCELLANEOUS

4.1 Notices. Any notices required in accordance with any of the provisions herein shall be sent by registered or certified mail or hand delivered, addressed as follows:

To the City: City of Shoreline
 17544 Midvale Ave. North
 Shoreline, WA 98133-4921
 Attn: City Manager

To Developer: Opus Northwest, LLC
 13920 SE Eastgate Way, Suite 250
 Bellevue, WA 98005
 Attn:

or at such other place as the parties may in writing direct. All notices shall be deemed effective upon receipt, refusal of delivery or attempted delivery.

4.2 No Joint Venture. It is not intended by this Lease to, and nothing contained in this Lease shall, create any partnership, joint venture or other arrangement between Lessor and the City.

4.3 No Merger. In no event shall the interest, estate or rights of Lessor hereunder merge with any interest, estate or rights of the City as lessee under this Lease, it being understood that such interest, estate and rights of Lessor shall be deemed to be separate and distinct from the City's interest, estate or rights as lessee under this Lease, notwithstanding that any such interests, estates or rights shall at any time or times be held by or vested in the same person, corporation or other entity.

4.4 Amendment. This Lease may not be amended except by written instrument executed by the Lessor and the City and approved by the City Council and the Developer. The Lessor's and Developer's approval of such amendments, if required by the Agreement, shall not be unreasonably withheld.

4.5 Entire Agreement. The Agreement, this Lease and any Attachments or attachments thereto or hereto and forming a part thereof or hereof, set forth the entire agreement

of the Lessor and the City concerning the Property Interests, and there are no other agreements or understandings, oral or written, between the Lessor and the City with regard to the Property Interests. In the event of a conflict between any other agreement and this Lease, the provisions of this Lease shall prevail.

4.6 Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

4.7 Recording. Any party may record this Lease in its entirety or in the form of a memorandum. Said memorandum or short form shall describe the parties, the Property Interests and this Lease.

4.8 Costs. Except as otherwise provided in the Agreement, the City shall be responsible for and provide for the payment of all costs and expenses related to the execution of this lease, the execution and delivery of Certificates of Participation in this Lease, the transfer of title or the transfer of other interests in this Lease, and the exercise of the Option, including without limitation insurance, recording fees, escrow fees and any applicable real estate excise taxes.

4.9 Governing Law; Venue. This Lease and the rights of the parties hereto shall be governed and construed in accordance with the laws of the State of Washington. Venue for any action brought under this Lease shall be in the Superior Court for the State of Washington in King County.

4.10 Time. Time is of the essence in this Lease.

4.11 Successors and Assigns. This Lease may not be assigned except in accordance with Section 3.17 and the Agreement. All of the terms, provisions, and conditions of this Lease shall inure to the benefit of and be enforceable by the respective permitted successors and assigns of the parties to this Lease.

4.12 No Third-Party Beneficiaries. Except as expressly set forth herein, the provisions of this Lease are for the exclusive benefit of the parties to this Lease and their respective permitted successors and assigns, and are not for the benefit of any third person. This Lease shall not be deemed to have conferred any rights upon any third person.

4.13 No Waiver of Rights. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any party.

4.14 Survivability. Notwithstanding any provision in this Lease to the contrary, Article 11 (Representations and Warranties) shall remain operative and in full force and effect, regardless of the termination of this Lease in accordance with its terms.

4.15 Counterparts. This Lease may be executed in several counterparts, which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year first set forth above.

CITY OF SHORELINE, WASHINGTON, a
municipal corporation

Approved to as form:

By: _____
Robert Olander, City Manager

OPUS NORTHWEST, LLC

Ian R. Sievers
City Attorney

By: _____

Title: _____

STATE OF _____)
) ss
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument as the _____ on behalf of _____, a _____ [limited liability company], pursuant to the provisions of the Limited Liability Company Agreement of said company, and acknowledged it to be the free and voluntary act of said company for the uses and purposes mentioned in the instrument.

DATED: _____

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

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

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

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

DATED: _____

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

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

EXHIBIT C

Base Shell and Core Building

**See Opus Northwest 30% Design Development Manual Dated 11/26/07
Shoreline City Clerk's Receiving # 4618**

EXHIBIT D

Project Budget

EXHIBIT E

SCHEDULE OF PRELIMINARY PLANS AND OUTLINE SPECIFICATIONS

See Opus Northwest 30% Design Development Manual Dated 11/26/07
Shoreline City Clerk's Receiving # 4618

EXHIBIT F

Project Schedule

EXHIBIT G

TENANT IMPROVEMENT PLANS DELIVERY DATES

1. WITH SHELL AND CORE. In order to have the Tenant Improvements in the Building bid with the Base Shell and Core Building, Tenant must deliver the Final Plans (as defined below) to Developer no later than the date one hundred twenty (120) days after _____. Notwithstanding the foregoing, with respect to any Tenant Improvements in the Building that are not standard office space improvements (e.g., computer center, print shop, cafeteria, conferencing center), the engineering drawings (but not the architectural drawings) for such Tenant Improvements must be delivered to Developer no later than the date ninety (90) days after _____ in order to have such Tenant Improvements bid with the Base Shell and Core Building.

2. SEPARATE FROM SHELL AND CORE. If Tenant does not meet the above dates, the Tenant Improvements in the Building shall be bid separately from the Base Shell and Core Building. In order to avoid a City-Caused Delay, as described in Section 2(b) of this Agreement, Tenant must deliver to Developer the Final Plans for the Building no later than the date three hundred sixty (360) days after _____. Notwithstanding the foregoing, with respect to any Tenant Improvements in the Building that are not standard office space improvements (e.g., computer center, print shop, cafeteria, conferencing center), the engineering drawings (but not the architectural drawings) for such Tenant Improvements must be delivered to Developer no later than the date sixty (90) days after _____ in order to avoid an City-Caused Delay.

3. DESCRIPTION OF MATERIALS. The "Final Plans" shall mean plans for the Tenant Improvements that include all of the following information:

(a) Architectural Floor Plans: These shall be fully dimensioned floor plans showing partition layout and identifying each room with a number and each door with a number. The Basic Plans must clearly identify and locate equipment requiring plumbing or other special mechanical systems, area(s) subject to above-normal floor loads, special openings in the floor, and other major or special features.

(b) Electrical and Telephone Outlets: Locate all power and telephone requirements: Dimension the position from a corner and give height above concrete slab for all critically located outlets. Identify all dedicated circuits and identify all power outlets greater than 120 volts. For the equipment used in these outlets which require dedicated circuits and/or which require greater than 120 volts, identify the type of equipment, the manufacturer's name and the manufacturer's model number, and submit a brochure for each piece of equipment. Also identify the manufacturer's name of the phone system to be used and the power requirements, size, and location of its processing equipment.

(c) Reflected Ceiling Plan: Lighting layout showing location and type of all Building Standard and special lighting fixtures.

(d) Furniture Layout: Layout showing furniture location so that Landlord's engineer can review the location of all light fixtures.

(e) Millwork Details: These drawings shall be in final form with Tenant's office planner's title block in the lower right hand corner of the drawing, and shall include construction details of all cabinets, paneling, trim, bookcases, and door and jamb details for non-Building Standard doors and jambs.

(f) Keying Schedules and Hardware Information: This information shall be in final form and include a Keying Schedule indicating which doors are locked and which key(s) open each lock, plus an "X" on the side of the door where the key will be inserted if a keyed door. Complete specifications for all non-Building Standard hardware will also be provided.

(g) Room Finish and Color Schedule: This information shall be in final form and include locations and specifications for all wall finishes, floor covering and base for each room.

(h) Construction Notes and Specifications: Complete specifications for every item included except those specified by the Landlord.

Tenant shall be responsible for delays and additional costs in completion of Tenant's work caused by changes made to the Final Plans after the Final Plans have been delivered to Developer or by delays in delivery of special materials requiring long lead times.

EXHIBIT H

DISPUTE RESOLUTION PROCEDURE

City and Developer shall act in good faith and deal fairly in performing their respective duties under this Agreement in order to accomplish their mutual objectives and avoid disputes. If a dispute arises with respect to design or construction of the Project, the parties agree to utilize the dispute resolution process contained herein, which will be non-binding but a condition precedent to having said dispute decided in court by a judge or jury.

1. Mediation. Pursuant to Section 24 of this Agreement, in the event a dispute arises between Developer and City with respect to design and/or construction of the Project the parties shall proceed in good faith to resolve such dispute as expeditiously as possible and shall cooperate so that the progress of the design and construction of the Project is not delayed. If, however, the parties are unable to resolve the dispute within three (3) business days, either party may refer the dispute to the Mediator named below.

1.1 Mediator. For any dispute which cannot be resolved by the parties, the mediator hereunder ("Mediator") shall be John Beyer of Badger Consulting Services, or in the event he is unable or unwilling to act as such independent mediator, a mediator whom City and Developer have mutually designated to resolve such dispute. The Mediator is to act impartially and independently in the consideration of facts and conditions surrounding any dispute presented by Developer and City; however, the Mediator's recommendations concerning any such dispute are advisory only. The Mediator's recommendations shall be based on the pertinent provisions of this Agreement, and the facts and circumstances involved in the dispute. The Mediator's recommendations shall be furnished in writing to the parties.

1.2 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's duties hereunder.

1.3 City Responsibility. City shall furnish the Mediator one copy of all Contract Documents, including but not limited to the Building Design Guidelines, applicable contracts, interpretative reports, progress schedule and updates, monthly progress reports, and other documents pertinent to the performance of this Agreement and necessary to the performance of the Mediator's duties hereunder.

1.4 Term. Following execution of this Agreement, the Mediator shall have authority to act hereunder upon written request from either City or Developer and such authority shall terminate upon Final Acceptance, after Final Payment has been made.

1.5 Payment. The fees charged by the Mediator shall be shared equally by the parties. The Mediator's compensation shall include compensation for all materials, supplies, travel, office assistance and support and incidentals necessary to provide the services described herein. Payment for services rendered by the Mediator will be at the Mediator's standard hourly rate as approved by City and Developer prior to commencement of the dispute resolution proceeding.

1.6 Legal Relationship. The Mediator, in the performance of the duties described herein, is acting in the capacity of an independent agent and not as an employee of either Developer or City. The Mediator is absolved of any personal or professional liability arising from the recommendations made hereunder, unless due to gross negligence or willful malfeasance.

EXHIBIT I

LIST OF ADDITIONAL WARRANTIES

<u>Item</u>	<u>Warrantor</u>	<u>Warranty Period in Years</u>
Hot Rubberized Asphalt Waterproofing		15
Water Repellant Sealer		10
Metal Wall Panels		10 – Coiled Coated Metal
Metal Wall Panels		5 – Sprayed- on Coating Systems
Built-up Roofing		15 – NDL
Fluid Applied Roofing		5
Sheet Metal Flashing and Trim		15
Joint Sealants		5
Wood Doors		Lifetime of Project – Warping doors material only
All-Glass Entrances and Storefronts		2
Glass and Glazing		10
Glazed Aluminum Curtainwall and Window		5 – NDL
Waterproof membrane for ceramic tile		5
Broadloom Carpet		1 – Workmanshi p
Broadloom Carpet		10 – Wear Warranty
High Performance Coating		5
Variable Frequency Drives		2

