



City of Kenmore - 18120 68th Avenue NE - P.O. Box 82607 - Kenmore, WA 98028
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City of Kenmore
Special City Council Meeting Agenda
6:00 p.m., Monday, May 1, 2017
Kenmore City Hall, Council Chambers
18120 68th Ave. NE, Kenmore, WA 98028

If you have any questions or to confirm agenda items prior to the meeting, or if you require special accommodations, please call the City Clerk at 425-398-8900. You may also stop by City Hall at 18120 68th Avenue NE, Kenmore. Council agendas are also available on our website at www.kenmorewa.gov.

I. 6:00 p.m. CALL SPECIAL MEETING TO ORDER

II. RECESS TO EXECUTIVE SESSION
(Confidential Session of the Council)

- A. Discussion of Potential Litigation per RCW 42.30.110 (1)(i).

III. POSSIBLE ACTION RELATING TO EXECUTIVE SESSION

IV. 7:00 p.m. RECONVENE BACK TO REGULAR SESSION

V. ROLL CALL

VI. FLAG SALUTE

VII. STUDY SESSION

- A. Kenmore Village/Spencer Square Update
- Rob Karlinsey, City Manager
- MainStreet Property Group
[Agenda Item](#)
[2014 Spencer Square Purchase and Sale Agreement](#)
[2015 Spencer Square Development Agreement & Site Plan Documents](#)
[Spencer Square Next Phase Proposed Conceptual Renderings](#)
[2015 Spencer Square Site Plan](#)
[Spencer Square The Next Phase Presentation](#)

VIII. STAFF REPORT

IX. COUNCILMEMBER REPORTS, COMMENTS & INITIATIVES

X. ADJOURNMENT

Upcoming Meetings:

Monday, May 8, 2017 - Regular Council Meeting

Monday, May 15, 2017 - Regular Council Meeting

Monday, May 22, 2017 - Regular Council Meeting



City Council Business Agenda Item
City of Kenmore, WA

Subject/Topic: Kenmore Village/Spencer Square Update Move to: No formal action requested. Discussion and feedback only.	For Special City Council Meeting Agenda of: May 1, 2017 Department: City Manager's Office <table style="width: 100%;"> <thead> <tr> <th style="text-align: left;"></th> <th style="text-align: right;"><u>Initial & Date</u></th> </tr> </thead> <tbody> <tr> <td>Approved by Department Head:</td> <td style="text-align: right;">_____</td> </tr> <tr> <td>Approved by City Attorney:</td> <td style="text-align: right;">_____</td> </tr> <tr> <td>Approved by Finance Director:</td> <td style="text-align: right;">_____</td> </tr> <tr> <td>Approved by City Manager:</td> <td style="text-align: right;">_____<i>RLK</i>_____</td> </tr> </tbody> </table> Exhibits/Attachments: 1. Spencer Square Purchase and Sale Agreement 2. Spencer Square Development Agreement & Site Plan Documents 3. Spencer Square Next Phase Proposed Conceptual Renderings 4. 2015 Spencer Square Site Plan		<u>Initial & Date</u>	Approved by Department Head:	_____	Approved by City Attorney:	_____	Approved by Finance Director:	_____	Approved by City Manager:	_____ <i>RLK</i> _____
	<u>Initial & Date</u>										
Approved by Department Head:	_____										
Approved by City Attorney:	_____										
Approved by Finance Director:	_____										
Approved by City Manager:	_____ <i>RLK</i> _____										

INFORMATION/BACKGROUND:

Since the City's incorporation in 1998 and adoption of the Kenmore Downtown Plan in 2003, the City has been working toward developing a vibrant downtown and "sense of place". In 2003 and 2005, the City assembled several downtown properties known as Kenmore Village. In 2012, the City involved the community to create a position statement for Kenmore Village and a process by which to sell the properties for redevelopment. After listing the properties for sale, the City negotiated with Main Street Property Group LLC for the acquisition and redevelopment of the former park and ride parcel. MainStreet has subsequently acquired the parcel and constructed high density housing units, known as Spencer68 Apartments and Lofts.

In 2014 and into early 2015, MainStreet acquired the remaining commercial portion of Kenmore Village and entered into a development agreement with the City to construct the LINQ and another 20,000 square foot, single story commercial building next to and just south of the LINQ. The LINQ building has been constructed and the 94 residential units on the upper four floors are in the process of being occupied by new residents. The LINQ's main floor on 68th Avenue will be medical office space. Evergreen Health has signed a lease with MainStreet for this space and is in the process of constructing its tenant improvements. These improvements should be complete and the main floor (or portions thereof) should be ready for occupancy by the end of this year (perhaps as soon as this fall).

The City's 2015 purchase and sale agreement with MainStreet gives MainStreet an option to purchase the "restaurant pad" adjacent to and just west of the Town Square. MainStreet cannot exercise this option until they have entered into a lease with a "sit-down" restaurant. This purchase option was set to expire at the end of last

I:/City Clerk/Agenda Items/Templates

month but contained a provision that MainStreet can extend the option another six month for a cash payment of just under \$10,000. MainStreet has exercised this extension provision; as a result, MainStreet's option to purchase the restaurant pad has been extended to October of this year.

At the Special City Council meeting on Monday, May 1st, MainStreet representatives would like to give a status update on Spencer Square, including their efforts to acquire a restaurant tenant. They would also like to discuss potential other plans for Spencer Square, including a mixed use building fronting 68th Avenue between the LINQ and the City's Hangar community building. MainStreet would also like to discuss potential plans for the restaurant pad.

City of Kenmore Contract No. 14-C1254

**AGREEMENT FOR PURCHASE, SALE AND DEVELOPMENT
OF REAL PROPERTY**

THIS AGREEMENT FOR PURCHASE, SALE AND DEVELOPMENT OF REAL PROPERTY (this "Agreement") is made and entered as of the 20 day of NOVEMBER, 2014, by and between MSPT XI LLC and/or assigns, a Washington limited liability company ("Buyer"), and the City of Kenmore, a Washington municipal corporation (referred to herein as "Seller" and, in its regulatory capacity, as the "City"). Seller and Buyer are at times referred to collectively herein as the "Parties."

WHEREAS, Seller owns certain real property located in the City of Kenmore, King County, Washington, legally described on **Exhibit A** hereto (the "Existing Parcel"); and

WHEREAS, Seller plans to subdivide the Existing Parcel into five (5) separate legal lots: the "Town Green Lot" and the "Pavilion Lot," which are legally described in **Exhibit B** and referred to herein as the "City Property;" "Lot D" and "Lot B," which are legally described on **Exhibit C-1** and referred to herein as the "Commercial Property;" and "Lot C," which is legally described in **Exhibit C-2** and referred to herein as the "Option Property;" and

WHEREAS, by resolution duly passed and recorded in the public record, the City Council of Seller has declared the Existing Parcel to be surplus; and

WHEREAS, Seller desires to sell and Buyer desires to purchase, on the terms and subject to the conditions set forth in this Agreement, the Commercial Property along with all of the structures, improvements and personal property located thereon or thereunder and all rights and interests of Seller appurtenant thereto, including, but not limited to all oil, gas, mineral, development, air and water rights related the Commercial Property, all strips and gores and any real property lying in the bed of any street, road or alley, open or proposed, adjoining such Commercial Property, and all intangible property now or hereafter existing with respect to the Commercial Property, including, but not limited to, all plans and specifications and other architectural and engineering drawings and all warranties, governmental permits, approvals, leases, rental agreements and licenses relating to the Commercial Property or any part thereof; and

WHEREAS, Seller is willing to grant to Buyer, and Buyer desires to obtain, on the terms and subject to the conditions set forth in this Agreement, an option to purchase the Option Property along with all of the structures, improvements and personal property located thereon or thereunder and all rights and interests of Seller appurtenant thereto, including, but not limited to all oil, gas, mineral, development, air and water rights related the Option Property, all strips and gores and any real property lying in the bed of any street, road or alley, open or proposed, adjoining such Option Property, and all intangible property now or hereafter existing with respect to the Option Property, including, but not limited to, all plans and specifications and other architectural and engineering drawings and all warranties, governmental permits, approvals, leases, rental agreements and licenses relating to the Option Property or any part thereof;

NOW, THEREFORE, in consideration of the promises made in this Agreement, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Seller hereby agrees to sell and convey the Commercial Property to Buyer, and Buyer hereby agrees to purchase and accept the Commercial Property from Seller, on the terms and conditions expressly set forth in this Agreement.

1. **Commercial Property Purchase Price.** The Purchase Price for the Commercial Property is Nine Hundred Seventy Thousand Six Hundred Sixty-Seven Dollars (\$970,667) (the “**Commercial Property Purchase Price**”), payable in cash at closing, with credit for the Earnest Money.

2. **Effective Date; Appointment of Escrow Agent and Title Insurance Company.** Upon the Parties’ mutual execution hereof, a true and complete copy of this Agreement showing the signatures and initials of the Parties shall be delivered by electronic mail to the Escrow Agent. The date on which this Agreement is so delivered shall be the “**Effective Date**.” The Parties hereby appoint Scott Smouse (“**Escrow Agent**”) of Chicago Title Insurance Company (“**Title Company**”), located at 701 Fifth Avenue, Suite 2300, Seattle, Washington 98104 to serve as Escrow Agent for this transaction. Buyer and Seller shall execute and deliver to Escrow Agent such instructions as may be necessary or convenient to implement the terms of this Agreement and close the transaction contemplated by this Agreement, provided that they are not inconsistent with the terms of this Agreement.

3. **Earnest Money.**

a. Within two (2) Business Days after the later of the Effective Date or the date that Seller has delivered a current ALTA survey that represents the condition of the Property at Closing including easements and subdivision boundary lines (the “**As-of-Closing Survey**”), Buyer shall deliver to Escrow Agent cash in the amount of Forty-Eight Thousand Five Hundred Thirty-Three Dollars (\$48,533) (the “**Earnest Money**”). The Earnest Money shall be applicable to the Commercial Property Purchase Price at closing.

b. All Earnest Money when delivered to Escrow Agent shall be deemed fully earned and wholly non-refundable to Buyer, but applicable to the Commercial Property Purchase Price, and shall be promptly disbursed by Escrow Agent to Seller.

c. If Escrow Agent requires written consent or confirmation from Buyer to disburse said funds to Seller, Buyer hereby agrees promptly to provide such consent or confirmation as is reasonably required by Escrow Agent for such disbursement.

d. If for any reason the Earnest Money or any portion thereof should not be disbursed to Seller at the times here indicated, all of the Earnest Money shall nonetheless be deemed fully earned by Seller and fully non-refundable to Buyer and shall be disbursed to Seller in any event not later than the termination of this Agreement or at closing, whichever first occurs.

e. Notwithstanding any other term or provision of this Agreement, if a Seller Default shall exist as defined in this Agreement and if Buyer exercises the right to terminate this Agreement due to such Seller Default (or due to a failure of a Buyer Condition to Closing if such Condition to Closing expressly states that the Earnest Money shall be returned to Buyer if closing fails to occur due to failure to satisfy or obtain waiver of such Condition to Closing), then, without limitation on any other remedy that may be available to Buyer in the event of a Seller Default, upon such termination Seller shall promptly refund to Buyer all of the Earnest Money previously disbursed to Seller, and Escrow Agent shall disburse to Buyer all Earnest Money, if any, then still held by Escrow Agent.

4. **Closing.** All references in this Agreement to “closing” shall mean the closing at which time title to the Commercial Property shall be conveyed to Buyer and the Commercial Property Purchase Price, adjusted in accordance with this Agreement, shall be disbursed to Seller. Closing shall take place through the offices of Escrow Agent on the “**Closing Date**,” which shall be the fifth (5th) Business Day after the date as of which each of the following has occurred: (i) the Subdivision has been recorded in the

real property records of King County, Washington; (ii) the As-of-Closing Survey is received by Buyer; and (iii) Estoppel have been received by Buyer dated within 20-days of the Closing Date.

5. Buyer's Possession. Buyer shall be entitled to possession of the Commercial Property on the Closing Date, subject to the rights of the Tenants under the Leases.

6. No Feasibility, Title or Financing Contingencies. By executing this Agreement, Buyer acknowledges it has completed all "due diligence" investigations and other feasibility, financing, suitability, title, survey, environmental, property condition, economic, demographic and other evaluations, assessments and determinations relating to the Commercial Property as Buyer deems necessary to its decision to purchase the Commercial Property and, accordingly, Buyer's obligations hereunder are not subject to any contingencies or conditions except the Conditions to Closing expressly stated in **Section 7** below.

7. Conditions to Closing. The obligations of the parties to sell and purchase, respectively, the Commercial Property are subject only to the following conditions (the "**Conditions to Closing**"):

a. Buyer's Conditions. Buyer's obligation to purchase the Commercial Property at Closing is contingent upon satisfaction or Buyer's waiver of the following conditions as of the Closing Date:

i) Title. Buyer hereby agrees to accept title to the Commercial Property subject only to the Permitted Exceptions.

ii) Title Policy. At Closing, the Title Company shall be prepared to issue an extended coverage 2006 ALTA Extended owner's title insurance policy ("**Title Policy**") in the amount of the Commercial Property Purchase Price insuring Buyer and subject only to the following (collectively, the "**Permitted Exceptions**"): (a) a lien for real property taxes and assessments, not then delinquent; (b) the Schedule B – Section 2 General Exceptions and the Schedule B – Section 2 Special Exceptions listed in the Commitment for Title Insurance issued by the Title Company on September 9, 2014, under its Order No. 0009913-06; (c) the Tenant Leases; (d) matters affecting the condition of title to the Commercial Property resulting from the actions or activities of Buyer or created by or with the written consent of Buyer; (e) matters shown in the Survey; and (f) standard extended coverage owner's exceptions in the Title Policy.

iii) City Council Approval and Authorization. The City Council of the City, by resolution duly adopted and incorporated into the public record, shall have declared the Commercial Property to be surplus, approved this Agreement, and authorized sale of the Commercial Property in accordance with the terms of this Agreement.

iv) Tenant Estoppels. Seller shall have delivered to Buyer originals of the Approved Estoppels on or before the Closing Date and dated by the signor after a date which is twenty (20) days prior to the Closing Date. The Approved Estoppels shall evidence copies of the most current true and accurate leases attached as a part of Exhibit D.

v) Seller Deliveries. Seller shall have delivered to Escrow Agent all documents and materials required to be delivered by it in accordance with **Section 10** below.

vi) No Seller Default. Seller shall not be in default of any of Seller's obligations under this Agreement.

vii) Seller Representations and Warranties. All of Seller's Representations and Warranties stated in **Section 17** of this Agreement including, but not limited to **Section 14(j)** shall be true on and as of the Closing Date the same as though re-made as of the Closing Date.

viii) No Damage or Destruction. There shall have been no material casualty, condemnation or other event affecting the Commercial Property as described in **Section 18** hereof (titled "Damage/Destruction").

ix) Subdivision. The subdivision described in **Section 13(a)** below shall have occurred.

x) No Zoning Change Letter. The City shall have provided to Buyer a letter indicating that the City does not currently anticipate any changes to the zoning code of Kenmore, Washington that would materially affect Buyer's planned development of the Commercial Property.

b. Seller's Conditions. Buyer's obligation to purchase the Commercial Property at Closing is subject to and contingent upon satisfaction of the following conditions as of the Closing Date:

i) City Council Approval and Authorization. The City Council of the City of Kenmore, by resolution duly adopted and incorporated into the public record, shall have properly declared the Commercial Property to be surplus property and shall have approved this Agreement and authorized sale of the Commercial Property in accordance with the terms of this Agreement.

ii) Buyer Deliveries. Buyer shall have delivered all documents, funds and materials required to be delivered by it in accordance with **Section 10** below.

iii) No Buyer Default. Buyer shall not be in default of any of Buyer's obligations under this Agreement.

iv) Buyer Representations and Warranties. All of Buyer's Representations and Warranties stated in **Section 18** of this Agreement shall be true on and as of the Closing Date.

v) Subdivision. The subdivision described in **Section 13(a)** below shall have occurred and the As-of-Closing Survey shall be added to this Agreement as **Exhibit Q**.

8. Waiver of Seller Disclosure Statement. Buyer and Seller agree and acknowledge that the Commercial Property constitutes "Commercial Real Estate" as defined in RCW 64.06.005. Buyer has been advised of its right to receive a completed seller disclosure statement ("**Seller Disclosure Statement**") regarding the Commercial Property pursuant to RCW Chapter 64.06. Buyer hereby waives (a) the right to receive the Seller Disclosure Statement from Seller pursuant to RCW Chapter 64.06, and (b) the right to rescind this Agreement based on Buyer's lack of receipt of such a Seller Disclosure Statement; *provided*, Seller shall provide an abbreviated Seller Disclosure Statement to Buyer within the time specified by the above-cited statute consisting solely of the "Environmental" section of the statutory

form of the Seller Disclosure Statement. The provisions of this **Section 8** shall survive the Closing or termination of this Agreement.

9. Estoppel Certificates.

a. The Commercial Property is subject to the rights of two tenants (the “**Tenants**”) occupying or conducting business on the Commercial Property under tenant leases and rental agreements (the “**Leases**”) identified on **Exhibit D** hereto (the “**Rent Roll**”). Seller agrees to provide Buyer with a tenant estoppel certificate from each Tenant in the form prescribed by such Tenant’s Lease or, if no form is prescribed, in the form of **Exhibit F** hereto, each signed and dated by the Tenant as of a date not more than twenty (20) days prior to Closing, each without qualification, exception or material modification (each, when so completed, signed and dated, an “**Estoppel**”).

b. Approved Estoppels. If an executed Estoppel conforming to **Subsection 9(a)** is provided without qualification, exception or material modification, it is deemed an “**Approved Estoppel**.” If an Estoppel is provided in another form or with qualification, exception or material modification, Seller shall provide such estoppel to Buyer for its approval. Buyer agrees to review the forms and advise Seller as to any changes or objections to form or content in writing within three (3) Business Days from Buyer’s receipt of the form of Estoppel. Seller shall have ten (10) days from receipt of such change or objection notice to negotiate Estoppel revisions with the Tenant. If Seller is unable to provide revisions acceptable to Buyer within such 10-day period, Buyer may provide written notice to Seller that Buyer either: (i) waives the changes or objections as to such Estoppel (which thereafter shall constitute an Approved Estoppel); (ii) elects to postpone the Closing by up to, but not more than, ten (10) days to enable Seller to continue to make good faith efforts to obtain an executed Approved Estoppel; or (iii) elects to terminate this Agreement.

c. Delivery of Approved Estoppels. As a condition to Closing, Buyer shall receive an Approved Estoppel from each Tenant not later than five (5) Business Days preceding the Closing Date. If this condition is not satisfied, Seller shall not be in default based thereon, but in such event Buyer shall have the right, but not the obligation, to terminate this Agreement by written notice from Buyer to Seller and to the Escrow Agent given not later than ten (10) Business Days after the Effective Date. If Buyer elects to terminate this Agreement as a result of failure to satisfy the conditions of this Section, Seller shall nonetheless retain the Earnest Money, which shall in such event continue to be non-refundable to Buyer.

10. Closing Procedures, Costs and Pro-rations.

a. Deliveries. Each of the parties shall deliver the following to Escrow Agent not later than 12:00 O’clock, Noon, on the Business Day immediately preceding the Closing Date (except as to the Funds, which may be delivered by wire transfer on the morning of the Closing Date), with all documents or instruments to be signed by a party, duly executed and acknowledged if required:

i) Seller’s Deliveries: Seller shall deliver each of the following or counterpart signature pages thereto, executed and, as required, acknowledged, by Seller:

(1) the Deed in the form described in **Section 11** below, subject only to the Permitted Exceptions;

(2) Real Estate Excise Tax Affidavit;

- (3) two (2) executed originals of the Assignment and Assumption of Leases in the form attached hereto as **Exhibit G**;
 - (4) copies of notices provided by Seller to any Tenant and any Tenant acknowledgements in Seller's possession in response to same (which may be delivered directly to Buyer on the Closing Date outside of escrow);
 - (5) originals of all Leases in Seller's possession (which may be delivered directly to Buyer on the Closing Date outside of escrow);
 - (6) two (2) executed originals of the Assignment and Assumption of Service Contracts in the form attached hereto as **Exhibit H**;
 - (7) a Bill of Sale for conveyance of personal property and all intangible property relating to the Commercial Property in the form attached hereto as **Exhibit I**;
 - (8) two (2) executed originals of an affidavit by Seller to the effect that Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended (if required);
 - (9) a certificate in the form attached hereto as **Exhibit J** to the effect that to the actual knowledge of Seller there have been no material changes to the representations and warranties provided by Seller under this Agreement;
 - (10) two (2) executed originals of the Declaration of Covenants Regarding Transfer in the form attached hereto as **Exhibit L-1**;
 - (11) two (2) executed originals of the Declaration of Covenants Regarding Permanent Covenants in the form attached hereto as **Exhibit M**
 - (12) two (2) executed originals of the Memorandum of Option Agreement in the form attached hereto as **Exhibit P**;
 - (13) closing or settlement statement prepared by Escrow Agent with amounts and adjustments in accordance with this Agreement and as mutually approved by Seller and Buyer; and
 - (14) such other documents, instruments and instructions as may be required by Escrow Agent in accordance with standard escrow closing practices in the county in which the Commercial Property is located for closing of the transaction in accordance with this Agreement and as mutually approved by Seller and Buyer.
- ii) **Buyer's Deliveries:** Buyer shall deliver each of the following or counterpart signature pages thereto, executed and, as required, acknowledged, by Buyer:
- (1) Funds in an amount sufficient to complete Buyer's purchase of the Commercial Property in accordance with this Agreement (the "**Funds**");
 - (2) Real Estate Excise Tax Affidavit;

(3) two (2) executed originals of the Assignment and Assumption of Leases in the form attached hereto as **Exhibit G**;

(4) two (2) executed originals for the Assignment and Assumption of Service Contracts in the form attached hereto as **Exhibit H**;

(5) a certificate in the form attached hereto as **Exhibit K** to the effect that to the actual knowledge of Seller there have been no material changes to the representations and warranties provided by Seller under this Agreement;

(6) two (2) executed originals of the Declaration of Covenants Regarding Transfer in the form attached hereto as **Exhibit L-1**;

(7) two (2) executed originals of the Declaration of Covenants Regarding Permanent Covenants in the form attached hereto as **Exhibit M**;

(8) two (2) executed originals of the Memorandum of Option Agreement in the form attached hereto as **Exhibit P**;

(9) hard copies and/or electronic copies (where reasonably available) of all studies and reports that Buyer or its agents has/have conducted since December 1, 2013 during its analysis of the Existing Property or the parcel owned by Seller immediately to the west of the Existing Parcel and identified as King County parcel number 618170-0350 (the "**Post Office Parcel**") including, but not limited to, all building inspection reports for buildings located on the Existing Parcel and/or the Post Office Parcel, all Phase 1 or Phase 2 environmental reports prepared for the Existing Parcel and/or the Post Office Parcel, all reports and studies relating to Hazardous Materials located on the Existing Parcel and/or the Post Office Parcel, all soil studies and geotechnical analysis prepared for the Existing Parcel and/or the Post Office Parcel; all surveys, including all topographical surveys, prepared for the Existing Parcel and/or the Post Office Parcel, and any additional reports and studies prepared that Seller may reasonably request.

(10) closing or settlement statement prepared by Escrow Agent with amounts and adjustments in accordance with this Agreement and as mutually approved by Seller and Buyer; and

(11) such other documents, instruments and instructions as may be required by Escrow Agent in accordance with standard escrow closing practices in the county in which the Commercial Property is located for closing of the transaction in accordance with this Agreement and as mutually approved by Seller and Buyer.

b. Closing Costs. Closing costs shall be allocated and pro-rated between the parties as follows:

i) Seller and Buyer hereby expressly waive any requirement for escrow to ascertain, pro-rate and/or pay any utility charges relating to the Commercial Property, which Seller and Buyer agree they will take care of outside of escrow.

ii) All obligations under service contracts which are not terminated by the Closing Date and all rents received from Tenants as of the Closing Date and other fees received as of the Closing under any Lease or other agreement concerning the Commercial Property shall be

prorated and adjusted between the parties as of the Closing Date. All real and personal property taxes shall be prorated based upon the year in which they are assessed. At Closing, Buyer shall be given a credit against the Commercial Property Purchase Price of a dollar amount equal to the sum of all refundable Tenant deposits or prepaid rents held by Seller.

iii) Seller shall pay the current portion of any assessments owing against the Commercial Property and due as of Closing, and Buyer shall assume and pay that portion of any assessments owing against the Commercial Property coming due after Closing;

iv) The amount required for release of all monetary liens against the Commercial Property, if any, shall be paid by Seller.

v) The cost of an ALTA Standard Owner's Policy of Title Insurance as described below shall be paid by Seller. The cost of any extended coverage, endorsements, or coverage in addition to that provided on the Standard form shall be borne by Buyer.

vi) Seller shall pay all real estate excise taxes for transfer of title of the Commercial Property to Buyer.

vii) Seller and Buyer shall each pay one-half of the escrow and closing fees and charges of Escrow Agent.

viii) Seller shall pay the real estate commission owing to the Broker as provided in **Section 28** of this Agreement;

ix) If Buyer obtains financing for this transaction, Buyer shall pay all costs of financing, including, but not limited to, loan fees, lender attorney's fees, and the premium for the lender's policy of title insurance.

x) Each party shall bear its own legal and consulting fees incurred in connection with this transaction.

c. Pro-Ration of Income and Expenses. All rents received from Tenants as of the Closing Date shall be pro-rated between Seller and Buyer as of the Closing Date. Rents from Tenants received after Closing shall be applied first to the month in which Closing occurs, prorated as provided herein, then to rents accruing after Closing, then to rent owing for the period prior to the month in which Closing occurs. Utilities and expenses shall be pro-rated based on the parties' respective periods of ownership. The Closing Date shall be an income and expense day for the Buyer.

11. Deed. At Closing, Seller shall convey title to the Commercial Property to Buyer by Statutory Warranty Deed substantially in the form of **Exhibit F** hereto (the "**Deed**") subject only to the Leases and the Permitted Exceptions. In addition, Seller shall assign to Buyer, and Buyer shall assume from Seller, all of Seller's rights, interests, duties and obligations as landlord or lessor under the Leases, by Assignment and Assumption of Leases in the form of **Exhibit G** hereto.

12. Buyer Post-Closing Covenants. Buyer agrees that certain covenants shall apply to Buyer's ownership of the Commercial Property following Closing and agrees to both the form of and to permit recording at Closing of the Declaration of Covenants Regarding Transfer in the form of **Exhibit L-1** hereto (the "**Declaration of Covenants Regarding Transfer**"), and the Declaration of Covenants

Regarding Permanent Covenants in the form of **Exhibit M** hereto (the “**Declaration of Covenants Regarding Permanent Covenants**”).

13. Subdivision.

a. Seller and Buyer agree that on or before and as a condition precedent to conveyance to Buyer of the Commercial Property pursuant to the terms and conditions of this Agreement, Seller shall proceed with an application for all necessary governmental approvals to subdivide the Existing Property into five (5) legal lots, identified in **Exhibit B**, **Exhibit C-1**, and **Exhibit C-2** as the Town Green Parcel, the Pavilion Parcel, Parcel D, Parcel B and the Option Property/Lot C (the “**Subdivision**”). The Parties shall each cooperate with the other and assist diligently in pursuit of the Subdivision by executing all applications, instruments and other documents and promptly and timely providing all records and information pertaining to the Commercial Property or as required by such application.

b. In the event that the Subdivision cannot be effectuated prior to the date that is twelve (12) months after the Effective Date, the Parties agree that this Agreement shall terminate and Seller shall promptly refund to Buyer all of the Earnest Money previously disbursed to Seller, and Escrow Agent shall disburse to Buyer all Earnest Money, if any, then still held by Escrow Agent.

14. Town Green.

a. Dedication. Seller agrees that following Closing, it shall dedicate the Town Green Parcel for public use. By its signature below, Buyer acknowledges that at a later date and in its sole discretion Seller may sell the Pavilion Parcel and/or the Option Property (Lot C), provided, however, that any such sale of the Option Property shall comply with Seller’s grant of the Option to Buyer described in Section 29.

b. Use.

i. Seller and Buyer agree that the Town Green shall be a public space dedicated of record to the City for public use, and acknowledge that the intent is that the Town Green will be an active and engaging, park-like place for the public, conducive to entertainment as well as reflection, conversation, public or group gatherings and similar uses. It will be a public place at the center of things, where people from different backgrounds can strike up a conversation. It is important that this Town Green be integrated with other uses so that it has life day to day. Seller further agrees the planned uses of the Town Green should be consistent with and not materially impede Buyer’s development of the Commercial Property for retail purposes contemplated by this Agreement such that Seller’s design and uses of the Town Green should not materially interfere with the ability of Buyer’s tenants to conduct business in the retail spaces to be developed by Buyer on the Commercial Property.

ii. Following the dedication of the Town Green, the City shall proceed in good faith and a commercially reasonable manner to construct the Town Green. The City shall have exclusive responsibility for construction, operation, upkeep, maintenance, repair and replacement of all landscaping and improvements and programming provided within the Town Green and shall have full authority to remove, replace, add to, and otherwise modify the improvements and all subsequent improvements placed or constructed on or in the Town Green. The City shall have the right to charge fees for use of the Town Green but shall not at any time rent or lease space in the Town Green for the operation or conduct of any commercial business including, but not

limited to, purveyors of food or beverages, retail kiosks, businesses engaged in sports or recreational activities for profit, or any other for-profit enterprise or any business which may compete, directly with any business or tenant located on the Commercial Property; *provided*, such restriction shall not, however, prohibit the City from using or permitting the use of the Town Green for a “farmer’s market” for up to, but not exceeding, one day per week, or for organized physical fitness or recreational activities conducted by non-profit organizations, or for festivals, all of which shall at all times be subject to City control. The City shall further create, publish and enforce reasonable rules and regulations for use of the Town Green which rules and regulations shall include the foregoing restrictions and shall further include such restrictions as to noise levels, time of day, crowd control, parking and other criteria designed to assure that the Town Green shall not be provided for any use which materially interferes with or adversely affects the conduct of any of the retail, commercial, office and other businesses conducted by tenants of the Commercial Property or residential use and enjoyment of the residences located on the multifamily residential property adjoining the Commercial Property immediately to the north.

15. Reserved.

16. Coordination of Development Efforts.

a. Construction Easements; Declaration of Covenants. The Parties agree to coordinate the development of the City Property and the Commercial Property in good faith. Such coordination may include, without limitation, the following: granting temporary construction easements without further payment, granting easements for utilities without further payment, and agreeing to and permitting recording of certain covenants governing the ongoing coordinated use, operation, maintenance and development of the City Property and the Commercial Property.

b. Demolition of Structures. Buyer and Seller consent to demolish all structures that straddle the boundary line between the City Property, the Commercial Property, and/or the Option Property, coordinate such demolition, and share the costs of such demolition as discussed below (the “**Demolition of Structures**”). The Parties agree that Buyer shall undertake all work necessary to complete the Demolition of Structures, including, without limitation, applying for all necessary permits, demolishing all structures and removal of all demolished debris (including any Hazardous Materials that may be located therein), and filling and/or grading the area previously covered by the structure(s). The costs of the Demolition of Structures, including, without limitation, the costs of abatement for any Hazardous Materials, shall be paid by Buyer and Seller based on the percentage of the total square footage of the to-be-demolished structure(s) located on the City Property, the Commercial Property and/or the Option Property, respectively. The Demolition of Structures shall be completed within ninety (90) days of written notice from Seller to Buyer requesting the Demolition of Structures or at such earlier date as Buyer elects to commence the Demolition of Structures.

c. Development of Commercial Building; Structured Parking. Following Closing, in the event that the Buyer determines that it is economically feasible to develop a commercial building and/or structured parking on a portion of the Commercial Property, the Parties agree to negotiate in good faith to enter into a development agreement pursuant to Chapter 36.70B RCW setting forth the standards for Buyer’s development and use of the Commercial Property (the “**Development Agreement**”). The Development Agreement shall incorporate the terms listed in **Exhibit N** to this Agreement.

17. Representations and Warranties of Seller. Seller represents and warrants to Buyer the

following:

- a. Title. Seller is the holder of fee title to the Commercial Property subject only to the Permitted Exceptions.
- b. Authority to Perform. Seller has full authority to perform all of Seller's obligations under this Agreement, including, but not limited to all necessary right, title and authorization to sell, assign, convey, transfer and deliver to Buyer, according to the terms of this Agreement, all documents, instruments, materials, rights, entitlements and interests comprising the Commercial Property. Seller is a governmental entity. The person signing this Agreement on behalf of the Seller has obtained all the necessary authorizations and approvals to execute this Agreement on behalf of Seller, and except as to such actions, no authorizations or approvals, whether of other governmental bodies or otherwise, are or will be necessary in order for Seller to enter into this Agreement.
- c. No Conflict. Neither the execution of this Agreement nor the performance by Seller of its obligations hereunder or consummation by Seller of the transactions described herein will (i) conflict with or result in a breach of the terms, conditions or provisions of or constitute a default, or result in a termination of any contract, lease, or agreement (written or oral) with respect to the ownership, operation, maintenance, use or occupancy of the Commercial Property or to which Seller is a party; (ii) violate any restriction to which either the Commercial Property or Seller is subject; or (iii) constitute a violation of any applicable law or legal requirement of which Seller or any of its principals, members, partners, officers, managers or owners is aware.
- d. Zoning and Other Laws. Seller represents that the redevelopment of this Property in accordance with the Agreement is within the scope of actions allowable under the zoning or land use codes applicable to the Commercial Property, subject, however, to all other permitting and regulatory requirements that apply to any proposed development, including, building codes, sign codes, ADA requirements and such other permitting and land use requirements applicable to any proposed development. This representation is not a representation or warranty, express or implied, of the qualification for permits of any particular intended development.
- e. No Prior Rights. No person or entity is the holder of or entitled to exercise any option, right of first refusal, right of first option or similar right to acquire the Commercial Property or any portion thereof.
- f. Condemnation and Litigation. There is no threatened, pending or planned condemnation proceeding or other litigation, claim or proceeding, in law or in equity, relating to or otherwise affecting the Commercial Property.
- g. Violations. Seller has not received any notice, suit, order, or judgment, by or on behalf of any federal, state, county or municipal authority, claiming or finding any violation by the Commercial Property of any code, ordinance, statute, regulation, court ruling or other law pertaining to real property use, zoning, building, fire, air pollution, water pollution, hazardous substances, or public health or safety, or any notice, suit, order, or judgment seeking or requiring any improvement, alteration, correction or other work on the Commercial Property.
- h. Hazardous Materials. Except as disclosed in the Environmental Reports listed on **Exhibit O** hereto, Seller has no actual knowledge of the presence on or in or the release from the Commercial Property of any Hazardous Materials except in minimal quantities which do not exceed any limitation under applicable environmental laws or as is disclosed in or by the

environmental reports and documents provided to Buyer as part of the Commercial Property Information. As used herein, "**Hazardous Material**" means any hazardous waste or other substances listed, defined or classified as hazardous, dangerous, radioactive, toxic, solid waste or a pollutant or contaminant in any Environmental Law. The term Hazardous Material shall also include any hazardous building materials, including, without limitation, lead based paint and asbestos. The term "**Environmental Law**" includes any federal, state, municipal or local law, statute, ordinance, regulation, order or rule pertaining to health, industrial hygiene, environmental conditions or hazardous substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the federal Clean Water Act (33 U.S.C. Section 1251 et seq.), or the Washington Model Toxics Control Act, RCW chapter 70.105B et seq.

i. No Liens or Unpaid Amounts. All amounts due or owing for labor, materials, equipment or lienable services furnished with respect to the Commercial Property have been paid in full or will be paid in full and discharged by the Closing Date.

j. Leases. Seller has not received any written notice of any offsets, defenses, or claims against rent or other charges payable to Seller or other performance or obligations otherwise due from any Tenant under any Lease, except as specifically set forth in the Rent Roll. Seller has provided Buyer with access to true, correct, and complete copies of each Lease referred to in the Rent Roll.

k. Purchase Rights. No person or entity has a contract or option to purchase, letter of intent, right of first refusal or first offer, or similar right with respect to the Commercial Property that is presently outstanding.

l. Survival. All of the representations and warranties of Seller contained in this **Section 14** will survive the Closing Date.

18. Representations and Warranties of Buyer. Buyer represents and warrants to Seller the following:

a. Buyer's Existence. Buyer is a validly formed limited liability company and has paid all fees and met all licensing and registration requirements due the State of Washington.

b. Authority to Perform. Buyer has full right, title, authority and capacity to execute and perform this Agreement and to consummate all of the transactions contemplated herein, and the individual(s) who on Buyer's behalf execute and deliver the Agreement and all documents to be delivered to Seller hereunder are and will be duly authorized to do so and have the full authority to bind Buyer to this Agreement.

c. Litigation. There is no litigation, claim or proceeding pending or, to Buyer's knowledge, threatened, against Buyer or any of Buyer's members or principals before any court or administrative agency which might result in Buyer being unable to consummate this transaction.

d. No Conflict. Neither the execution of this Agreement nor the performance by Buyer of its obligations hereunder or consummation by Buyer of the transactions described herein will (i) conflict with or result in a breach of the terms, conditions or provisions of or constitute a default, or result in a termination of any contract, lease, or agreement (written or oral) to which

Buyer is a party; (ii) violate any restriction to which Buyer is subject; or (iii) constitute a violation of any applicable law or legal requirement of which Buyer or any of its principals, members, partners, officers, managers or owners is aware.

e. Survival. All of the representations and warranties of Buyer contained in this **Section 15** will survive the Closing Date.

19. Changes in Representations and Warranties. The foregoing representations and warranties are to be made by the parties as of the Effective Date. As a condition to closing, each of such representations and warranties shall also be true without material exception as of the Closing Date. If after the Effective Date a party making a representation and warranty (the “**Representing Party**”) becomes aware of facts that would cause such representation and warranty to be untrue in any material way or containing a material omission, the Representing Party shall notify the other party (the “**Nonrepresenting Party**”) in writing within five (5) Business Days after the Representing Party’s discovery of such facts, and shall include copies of documents or materials, if any in the Representing Party’s possession or reasonably within its access, related to such facts. If a representation and warranty can no longer be accurately made by the Representing Party and this is (i) due to a state of facts first arising or first discovered or brought to the attention of the Representing Party after the Effective Date and (ii) not intentionally caused by the Representing Party, and if (iii) such new state of facts materially and adversely affects a right, remedy or obligation of the Nonrepresenting Party under this Agreement, or will prevent a party from performing as required herein, or, in the case of Buyer, materially increases the costs associated with Buyer’s intended use of the Commercial Property or materially decreases value of the Commercial Property, then the Nonrepresenting Party may by written notice to the Representing Party elect to terminate this Agreement. Such election to terminate must be exercised within ten (5) Business Days after the Nonrepresenting Party receives the written notice from the Representing Party as provided above, which notice must specify each representation and warranty which is not or is no longer true in some or all respects and the facts causing such representation and warranty not to be entirely true without material exception. During such 5-day period, however, the parties shall negotiate in good faith about possible solutions to address the change in facts, which may include proposals for courses of actions to cure the issue or price adjustments or such other solution as may be mutually agreed upon by the parties; however, neither party shall be required or compelled to accept or agree upon a resolution which diminishes such party’s rights or the value of its interests under this Agreement. If Buyer is entitled to, and does terminate this Agreement based on this Section as a result of a change to a Seller representation or warranty, upon such termination, the Earnest Money shall be refunded to Buyer.

20. Indemnification. In addition to and not in place of any other agreement, express or implied, to indemnify or hold the other harmless, Seller and Buyer each agrees to indemnify and hold the other harmless as follows:

a. Seller’s Indemnities.

i) Seller agrees to indemnify and hold Buyer harmless from any and all costs, damages, losses, claims, judgments, and other amounts, including attorney’s fees and costs relating thereto, to the extent resulting or arising from or proximately caused by the material falsity of any of Seller’s representations expressly stated in this Agreement.

ii) Seller agrees to indemnify and hold Buyer harmless from any and all costs, damages, losses, claims, judgments, and other amounts, including attorney’s fees and costs relating thereto caused by Seller’s failure to perform any landlord’s or owner’s obligation under any Lease or Service Contract for the Commercial Property prior to the Closing Date.

b. Buyer's Indemnities.

i) Buyer agrees to indemnify and hold Seller harmless from any and all costs, damages, losses, claims, judgments, and other amounts, including attorney's fees and costs relating thereto, resulting or arising from or proximately caused by the material falsity of any of Buyer's representations expressly stated in this Agreement.

ii) Buyer agrees to indemnify and hold Seller harmless from any and all costs, damages, losses, claims, judgments, and other amounts, including attorney's fees and costs relating thereto caused by Buyer's failure to perform any landlord's or owner's obligation under any Lease or Service Contract for the Commercial Property assumed by Buyer on and after the Closing Date.

c. Survival of Indemnification. Each of the indemnifications contained in this Section shall survive the closing of this transaction for 2 years following the Closing Date.

21. Damage/Condemnation. If on or before the Closing Date the Commercial Property is materially damaged due to casualty or catastrophe, or condemnation proceedings are commenced with respect to all or a portion of the Commercial Property, and such damage or condemnation materially affects Buyer's intended use thereof, then Buyer shall have the right, at its sole election, by giving notice to Seller, either to terminate this Agreement or to proceed with the purchase in accordance with this Agreement. Seller shall provide Buyer with written notice of any such casualty, catastrophe, or condemnation proceedings within five (5) Business Days after Seller becomes aware of such damages or proceedings. If Buyer elects to terminate this Agreement, Buyer shall give written notice of such termination to Seller within five (5) Business Days after Buyer has received written notice of the casualty or condemnation, and on Seller's receipt of such notice, Seller shall return the Earnest Money to Buyer, and Buyer shall have no further right or interest in the Commercial Property. If Buyer does not provide such notice of termination to Seller within the time here specified, Buyer shall be conclusively deemed to have elected to waive the right to terminate and shall proceed to complete its purchase of the Commercial Property with no modification to this Agreement.

22. Covenant Not to Sue.

a. Definitions. For purposes of this **Section 22** only, the following terms shall have the following ascribed meanings:

i) "Claims" means all claims, suits, actions, causes of action, demands, rights, damages, costs (including, without limitation, past, present or future remedial action costs), expenses, penalties, fines or compensation whatsoever, direct or indirect, and expenses, (including, without limitation, attorneys' and experts' fees).

ii) "Environmental Laws" means all federal, state, and local laws, statutes, rules, regulations, ordinances, and codes, and any judicial or administrative interpretation thereof or requirement thereunder, relating to the regulation or protection of human health, safety, the environment and natural resources, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act; the Solid Waste Disposal Act; the Resource Conservation and Recovery Act; the Toxic Substances Control Act, and any similar or comparable state or local laws, including without limitation, the Model Toxics Control Act.

iii) "Hazardous Substance(s)" means any waste, pollutant, contaminant, chemical, petroleum product, pesticide, fertilizer, substance, or material that: (i) after release into the

environment and upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, or genetic abnormalities; or (ii) is defined, classified, or designated as hazardous, toxic, radioactive, dangerous, or other comparable term or category under any Environmental Laws.

b. Buyer fully releases, discharges and covenants not to sue Seller for all Claims, of any nature, known or unknown, asserted or unasserted, past, present or future, in any way related to or arising out of the release or threatened release, or both, of any Hazardous Substance from, on, within or below the Commercial Property, including, but not limited to, those Hazardous Substances originating on the Post Office Parcel.

23. Default and Remedies.

a. Notice and Opportunity to Cure. A party shall be in default under this Agreement if it receives written notice from the other party specifying with reasonable particularity the act or omission of the notified party which is in breach of such notified party's obligations under this Agreement, and fails to take or refrain from such action as necessary to terminate and/or cure such breach within three (3) Business Days after receipt of such notice; *provided*, a party shall be in default, and no such notice or opportunity to cure shall apply, if such party fails to deliver to Escrow Agent the documents and, if applicable, Funds specified in **Section 10** hereof within the time stated in that Section.

b. Seller's Remedies; Liquidated Damages. IF BUYER IS IN DEFAULT UNDER THIS AGREEMENT AND IF SUCH DEFAULT RESULTS IN A FAILURE TO SATISFY A CONDITION TO CLOSING OR OTHERWISE PREVENTS THE ESCROW AGENT FROM BEING ABLE TO COMPLETE THE CLOSING WITHIN THE TERMS OF THIS AGREEMENT ON THE CLOSING DATE, THE PARTIES HAVE DETERMINED AND AGREED THAT SELLER WILL SUSTAIN ACTUAL LOSS AND DAMAGES, THE AMOUNT OF WHICH IS NOT SUSCEPTIBLE TO PRECISE ASCERTAINMENT. ACCORDINGLY, IN THE EVENT OF SUCH DEFAULT BY BUYER, SELLER SHALL HAVE AS ITS SOLE AND EXCLUSIVE REMEDY THE RIGHT TO TERMINATE THIS AGREEMENT (PROVIDED SELLER IS NOT THEN ALSO IN DEFAULT UNDER THIS AGREEMENT) AND, UPON SO DOING, SHALL BE ENTITLED TO RETAIN THE EARNEST MONEY AS LIQUIDATED DAMAGES. BY PLACING THEIR INITIALS BELOW, BUYER AND SELLER ACKNOWLEDGE THEIR AGREEMENT TO THIS LIQUIDATED DAMAGES PROVISION. IT IS AGREED THAT THE SOLE AND EXCLUSIVE REMEDY FOR SELLER IN THE EVENT BUYER IS IN DEFAULT FOR FAILURE TO COMPLETE ITS PURCHASE OF THE COMMERCIAL PROPERTY IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL BE SELLER'S RETENTION OF THE FUNDS IN THE AMOUNT OF THE EARNEST MONEY AS LIQUIDATED DAMAGES. SELLER'S RETENTION OF THE EARNEST MONEY IS NOT INTENDED AS A FORFEITURE OR PENALTY BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES FOR BUYER'S DEFAULT IN ITS OBLIGATION TO PURCHASE THE COMMERCIAL PROPERTY IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT. *PROVIDED*, THE FOREGOING SHALL NOT LIMIT OR RESTRICT ANY RIGHT OR REMEDY OF SELLER FOR BUYER'S BREACH OF ANY OF ITS OBLIGATIONS TO BE PERFORMED POST-CLOSING OR BREACH OF ANY DUTY OF BUYER EXPRESSED HEREIN TO INDEMNIFY, DEFEND OR HOLD HARMLESS SELLER OR SELLER-RELATED PARTIES; *PROVIDED FURTHER*, NOTHING IN THIS SUBSECTION (b) SHALL PROHIBIT SELLER FROM RECOVERING ITS

ATTORNEYS' FEES AS PROVIDED FOR IN SUBSECTION (f) OF THIS SECTION 23 IF SELLER IS REQUIRED TO BRING AN ACTION IN COURT OR ARBITRATION TO ENFORCE ITS RIGHTS TO THE EARNEST MONEY UNDER THIS SUBSECTION (b).

INITIALS OF PARTIES' REPRESENTATIVES:

BUYER: RYK SELLER: KJP

c. Buyer's Remedy. If Seller is in default under this Agreement and if such default results in a failure to satisfy a Condition to Closing or otherwise prevents the Escrow Agent from being able to complete the Closing within the terms of this Agreement on the Closing Date, then Buyer (provided that Buyer is not then in a material default under this Agreement), as its sole and exclusive remedy, may either (a) terminate this Agreement, in which event Buyer shall be entitled to full return of the Earnest Money and, in addition, to recover from Seller an amount equal to all of Buyer's actual, documented out-of-pocket expenses paid to third parties in connection with Buyer's due diligence investigation of the Commercial Property, in an amount not to exceed Fifty Thousand Dollars (\$50,000), *provided* that Buyer shall be required to provide to Seller a hard copy and/or electronic version (if reasonably available) of all studies and reports mentioned in **Section 10(a)(ii)(9)** above, or (b) seek specific performance of the obligation Seller to sell the Commercial Property pursuant to this Agreement, provided that any action seeking specific performance must be commenced within sixty (60) days after the scheduled Closing Date. Notwithstanding the foregoing, if Buyer would elect to pursue specific performance, but that remedy is not available or cannot be awarded, then Buyer shall be deemed conclusively to have elected the remedy provided under part (a) above in this subsection (c). Buyer hereby knowingly and intentionally waives all remedies for Seller's failure in performance (including any right to obtain damages from Seller), except those specifically provided for in this Section. *Provided*, the foregoing shall not limit or restrict any right or remedy of Buyer for Seller's breach of any of its obligations to be performed post-closing or breach of any duty of Seller expressed herein to indemnify, defend or hold harmless Buyer or Buyer-related parties; *provided further*, nothing in this subsection (c) shall prohibit Buyer from recovering its attorneys' fees as provided for in Subsection (f) of this **Section 23** if Buyer is required to bring an action in court or arbitration to enforce its remedies under this Subsection (c).

d. No Consequential, Incidental, Punitive or Exemplary Damages. Notwithstanding any term or provision of this Agreement or court rule or theory of recovery to the contrary, as an express condition for the agreement of each of Buyer and Seller to enter into this Agreement and as an inducement and consideration to each of them to do so, Buyer and Seller each agree that neither of them shall seek or be entitled to receive a judgment, award or other recovery of monetary relief or other remedy in the nature of or on account of consequential or incidental damages, or punitive or exemplary damages, in the event of a default or breach of this Agreement by the other which occurs prior to Closing.

e. Specifically Bargained For Limitations. The parties have specifically bargained for, negotiated and agreed upon the remedies provided for in this **Section 23**, which remedies are exclusive. Such remedies and limitation of damages and relief shall, however, apply solely in the event of a breach, default or failure to perform which causes or results in termination of this Agreement prior to Closing. In the event of any breach, default, violation, or failure to perform any other term or covenant of this Agreement relating to matters which do not affect or relate to the Closing or which occur after the Closing, or which involve a right to indemnification as to claims brought by third parties, Seller and Buyer shall each retain all rights and remedies available in law or in equity, including, in such event, the right to attorney's fees as set forth in this Agreement.

f. Attorney's Fees. In the event a lawsuit or arbitration proceeding should be commenced by or against any party hereto to enforce, interpret, construe or apply any of the terms and conditions of this Agreement, or to terminate this Agreement (whether the same shall proceed to judgment or otherwise), the substantially-prevailing party (as determined by the court, arbitrator or other adjudicator) shall receive from the other party a reasonable sum as attorney's fees together with costs. If the matter is decided in arbitration by agreement of the parties, the arbitrator shall have authority to make such determination and award such amount. The foregoing shall further apply to attorney's fees incurred on appeal or in a court proceeding to enforce or seek relief from an arbitration award made with respect to this Agreement or appeal therefrom.

24. Disclaimer of Warranties and Release. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES STATED IN **SECTION 17** ABOVE, SELLER SPECIFICALLY DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE (INCLUDING WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR USE OR ACCEPTABILITY FOR THE PURPOSE INTENDED BY BUYER) WITH RESPECT TO THE COMMERCIAL PROPERTY OR ITS CONDITION OR THE CONSTRUCTION, PROSPECTS, OPERATIONS OR RESULTS OF OPERATIONS OF THE COMMERCIAL PROPERTY. THE DISCLAIMERS IN THIS SECTION SPECIFICALLY, BUT WITHOUT LIMITATION, EXTEND TO: (1) MATTERS RELATING TO HAZARDOUS MATERIALS AND COMPLIANCE WITH ENVIRONMENTAL LAWS, (2) GEOLOGICAL CONDITIONS, INCLUDING SUBSIDENCE, SUBSURFACE CONDITIONS, WATER TABLE, UNDERGROUND STREAMS AND RESERVOIRS AND OTHER UNDERGROUND WATER CONDITIONS, LIMITATIONS REGARDING THE WITHDRAWAL OF WATER, EARTHQUAKE FAULTS, AND MATTERS RELATING TO FLOOD PRONE AREAS, FLOOD PLAIN, FLOODWAY OR SPECIAL FLOOD HAZARDS, (3) DRAINAGE, (4) SOIL CONDITIONS, INCLUDING THE EXISTENCE OF INSTABILITY, CONDITIONS OF SOIL FILL, SUSCEPTIBILITY TO LANDSLIDES, AND THE SUFFICIENCY OF ANY UNDERSHORE, (5) ZONING AND SUBDIVISION AND COMPLIANCE WITH ZONING AND SUBDIVISION LAWS, (6) THE VALUE AND PROFIT POTENTIAL OF THE COMMERCIAL PROPERTY AND (7) DESIGN, QUALITY, SUITABILITY, STRUCTURAL INTEGRITY AND PHYSICAL CONDITION OF THE COMMERCIAL PROPERTY AND COMPLIANCE OF THE COMMERCIAL PROPERTY WITH ANY LAWS (INCLUDING BUILDING CODES AND SIMILAR LAWS, THE AMERICANS WITH DISABILITIES ACT OF 1990 AND THE FAIR HOUSING AMENDMENTS ACT OF 1988). BUYER REPRESENTS AND WARRANTS TO SELLER THAT BUYER IS A KNOWLEDGEABLE, EXPERIENCED AND SOPHISTICATED BUYER OF REAL ESTATE. BUYER ACKNOWLEDGES THAT, EXCEPT FOR THE SELLER REPRESENTATIONS AND WARRANTIES STATED IN **SECTION 17** OF THIS AGREEMENT, BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY STATEMENT OF SELLER OR ANY OFFICER, DIRECTOR, TRUSTEE, AGENT, EMPLOYEE OR OTHER PERSON ACTING OR PURPORTING TO ACT ON BEHALF OF SELLER OR ANY AFFILIATE OF SELLER. BUYER ACKNOWLEDGES THAT IT HAS CONDUCTED OR WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS AS TO THE CONDITION OF THE COMMERCIAL PROPERTY AND ALL MATTERS BEARING UPON THE COMMERCIAL PROPERTY AND THE CONSTRUCTION, PROSPECTS, OPERATIONS AND RESULTS OF OPERATIONS OF THE COMMERCIAL PROPERTY AS IT DEEMS NECESSARY TO PROTECT ITS INTERESTS. BUYER IS ACQUIRING THE COMMERCIAL PROPERTY "AS IS" AND "WHERE IS" AND WITH ALL FAULTS, DEFECTS, ENVIRONMENTAL CONDITIONS OR OTHER ADVERSE MATTERS. EXCEPT WITH RESPECT TO A BREACH OF ANY OF SELLER REPRESENTATIONS AND WARRANTIES CONTAINED IN **SECTION 17** HEREOF, BUYER, EFFECTIVE ON THE DATE OF CLOSING, RELEASES EACH OF SELLER, ALL AFFILIATES THEREOF AND ALL PRINCIPALS, AGENTS, MEMBERS, MANAGERS, SPECIAL MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES AND

REPRESENTATIVES OF EACH OF THE FOREGOING (ALL OF THE FOREGOING COLLECTIVELY, THE “**SELLER-RELATED PARTIES**”) FROM ANY STATUTORY, COMMON LAW, AND/OR OTHER CLAIMS, LIABILITIES, OBLIGATIONS, CAUSES OF ACTION, COSTS, LOSSES OR DAMAGES OF ANY AND ALL KINDS AND NATURE, KNOWN OR UNKNOWN, THAT BUYER MAY HAVE AGAINST ANY OF THE SELLER-RELATED PARTIES ARISING FROM IN WHOLE OR IN PART, OR RELATING IN ANY WAY TO THE CONDITION OF THE COMMERCIAL PROPERTY OR ITS SUITABILITY FOR BUYER’S PURPOSES, INCLUDING ANY CLAIM, OBLIGATION OR LIABILITY ARISING WITH RESPECT TO ANY APPLICABLE OR ENVIRONMENTAL LAWS OR DUE TO THE PRESENCE, STORAGE, DISPOSAL, RELEASE OR THREATENED RELEASE OF A HAZARDOUS MATERIAL OR OTHER ENVIRONMENTAL CONTAMINATION ON, WITHIN, OR FROM THE COMMERCIAL PROPERTY BEFORE, AS OF, OR AFTER THE CLOSING DATE OR WITH RESPECT TO ANY LAWS GOVERNING THE CONDITION OF THE COMMERCIAL PROPERTY INCLUDING THE AMERICANS WITH DISABILITIES ACT AND SIMILAR LAWS AT THE LOCAL, STATE OR FEDERAL LEVEL.

Each of Buyer and Seller has separately initialed this provision to indicate its agreement to the foregoing statements and waivers.

SELLER:  BUYER: 

25. Survival and Time Limitation for Bringing Claims. The representations and warranties in **Sections 17 and 18** hereof will survive Closing, but only for a period of **two (2) years**, and no claim shall be allowed on any such representation or warranty unless notice of the claim and a detailed statement of the basis for the claim is delivered by the claimant to the other party by the second anniversary of the Closing Date (the “**Claims Deadline**”), and, if such notice of claim is timely given, a lawsuit or, if applicable, arbitration proceeding in accordance with this Agreement is commenced within ninety (90) days after such notice and detailed statement of the basis for the claim has been provided to the party against whom such claim is made. Time is of the essence hereof. Each of Buyer and Seller acknowledges that, by this Section, the parties have modified the statute of limitations for any claims to be brought arising from or otherwise based on the breach of any representation or warranty of the other as expressly stated in this Agreement and that such modification has been specifically bargained for and is intentionally adopted, approved and made a part of this Agreement and a condition to the bringing of any such claim. Any statute of limitations otherwise applicable to any such claims shall be deemed modified and amended by this Section. Nothing in this Section limits the disclaimers, waivers and releases in **Sections 23, 24 and 26**, all of which have also been specifically bargained for and will survive Closing without limit as to time.

26. As Is Purchase and Release of Claims.

a. Except as expressly represented or warranted herein, Seller is selling and Buyer is acquiring the Commercial Property **AS IS, WHERE IS**, with all faults and defects, whether patent or latent. Except as otherwise expressly stated in this Agreement, Seller has not made and Buyer has not received or relied on any other representations, express or implied, regarding the Commercial Property. Buyer acknowledges that any and all information, feasibility or marketing reports, environmental or physical condition reports, or other information of any type that Buyer has received or may receive from Seller or any representative, agent, employee or broker of any of Seller is furnished on the express condition that Buyer shall or would make an independent verification of the accuracy of any and all such information, all such information being furnished without any representation or warranty whatsoever, express or implied, by Seller or by any employee, agent or representative action on behalf of Seller. Buyer shall rely upon its own

inspection and its own professional advisors in its examination of the Commercial Property and all improvements thereon. Buyer hereby represents, warrants, and covenants to Seller that Buyer has conducted Buyer's own investigation of the Commercial Property and the physical condition thereof, including, without limitation, accessibility and location of utilities, use of hazardous materials on, from, or under the Commercial Property, earthquake preparedness of the Commercial Property, all matters concerning the Commercial Property with respect to taxes, assessments, income and expense data, bonds, permissible uses, zoning, covenants, conditions and restrictions, environmental conditions, and other matters which in Buyer's judgment are necessary or advisable or might affect or influence Buyer's use of the Commercial Property, or bear upon the value and suitability of the Commercial Property for Buyer's intended purposes, or Buyer's willingness to enter into this Agreement. Buyer recognizes that Seller would not agree to sell the Commercial Property except on an "AS IS, WHERE IS" basis, and acknowledges that neither Seller nor any principal, agent, manager, member, employee, broker or representative of Seller has made any representations or warranties of any kind in connection with the Commercial Property except those expressly stated in **Section 17** of this Agreement. Specifically, and without limitation, Buyer and Seller agree and bargain that all risks and further liability associated with Hazardous Materials and Environmental Laws are intended to be allocated to the Buyer at Closing subject only to **Section 17(h)** herein.

b. Except for any claim that may arise from a breach of the Seller Representations and Warranties stated **Section 17** of this Agreement, if Closing occurs, Buyer shall be deemed to have expressly waived all claims it may have against Seller and against any or all of the Seller-Related Parties (defined above) in any way relating to the Commercial Property or its condition, with the sole exception of any claim Buyer may have under the Deed or any document or instrument delivered by Seller to Buyer (directly or through Escrow Agent) at Closing. Except as to any claim arising under the Deed or any document or instrument delivered by Seller at Closing, Buyer's release hereunder includes any claim which may be brought by, through or under Buyer for any costs, losses, demands, penalties, fines, liens, judgments, injuries, liabilities, damages, expenses, demands, claims, actions or causes of action, whether direct or indirect, known or unknown, foreseen or unforeseen, arising from or related to the Commercial Property, or any portion thereof, and/or any construction defects, errors, omissions, or other conditions, latent or otherwise, geotechnical and seismic, affecting the Commercial Property, or any portion thereof, including the environmental condition of the Commercial Property or any law applicable thereto. By its initials below, Buyer expressly acknowledges and confirms that this Subsection (b) and immediately-preceding Subsection (a) have been specifically negotiated and bargained for, form an essential term of this Agreement, and have been voluntarily and knowingly accepted and approved by Buyer.

KJP

Buyer's Initials

27. Assignment. Buyer acknowledges Seller has specifically elected to enter this Agreement with Buyer based in material part on Seller's assessment of Buyer's qualifications and suitability for the project described herein and accordingly, Buyer agrees it may not and shall not assign its rights in or to this Agreement without the prior written consent of the Seller, which consent may be granted, withheld or conditioned on such terms as Seller determines in its sole and absolute discretion. Provided, Buyer may assign Buyer's interests in this Agreement to a limited liability company, limited partnership, limited liability partnership or other business entity in which Main Street Property Group LLC or the principals of Main Street Property Group LLC control and manage the assignee, which assignment shall not require Seller's consent but will be effective only on Seller's receipt of notice thereof. The City will work cooperatively with Buyer to facilitate its investment and development intent.

28. Brokers/Agents. Paul Sleeth and Billy Sleeth of the brokerage firm of Collier's International ("**Broker**") has been retained by Seller as Seller's broker for this transaction, and, upon completion of Closing (and conditioned thereon), Seller shall pay a real estate commission to Broker in accordance with a separate commission agreement between Seller and Broker (the terms of which govern Seller's obligations to Broker and are not modified or amended by this Agreement). Seller and Buyer each represents to the other that, except as to Broker, neither has retained or employed the services of a real estate agent or broker in connection with this transaction and each agrees to indemnify and hold the other harmless from any claim by any person asserting the right to a real estate commission from this transaction on the basis of any contract, agreement or other understanding such agent or broker claims to have entered with the party making the representation at the beginning of this sentence.

29. Option Property. For the period commencing on the date of this Agreement and ending at midnight of the last day of the twenty-fourth (24th) month following the Closing Date under this Agreement, subject to extension as provided below, (the "**Option Period**"), Buyer shall have an option to purchase the Option Property on the following terms and conditions, subject to the Tenant Contingency (as defined below) (the "**Option**").

a. Option Price. The price for Buyer's purchase of the Option Property pursuant to the Option shall be One Hundred Seventy-Nine Thousand Three Hundred Thirty-Three Dollars (\$179,333) (the "**Option Price**").

b. Extension of Option Period. Buyer may, at its sole discretion, elect to extend the Option Period for one six (6) month period (the "**Option Election**") by providing Seller with 1) written notice of its Option Election prior to the original expiration of the Option Period and 2) a payment of ten thousand seven hundred and fifty-nine dollars and 98/100 cents (\$10,759.98) (the "**Election Fee**"). If Buyer exercises its Option Election, the Option Price shall be increased to one hundred ninety thousand ninety-two dollars and 98/100 cents (\$190,092.98). The Election Fee shall be nonrefundable, but shall be applicable to the Option Price. In no event shall any of the terms granted under this Section 29 be construed to extend the Option Period beyond the date that is thirty (30) months after the Closing Date.

c. Contingencies. Buyer's ability to exercise the Option shall be wholly contingent on Buyer identifying and obtaining a signed commitment from a tenant that plans to operate a sit-down restaurant on the Option Property (the "**Tenant Contingency**"). Such commitment shall unequivocally state that (i) the tenant is prepared to lease the Option Property subject only to the Buyer closing the purchase of the Option Property, (ii) the term of such lease shall be not less than five (5) years, and (iii) the proposed tenant shall operate a sit-down restaurant on the Option Property (the "**Option Tenant Commitment**"). A copy of such signed commitment shall accompany the Notice of Exercise as discussed below. As used in this section, the term "sit-down restaurant" does not include (i) a restaurant that operates any kind of drive-through, (ii) a "fast food" restaurant, or (iii) a bar that serves people solely over the age of twenty-one (21) without an affiliated sit-down restaurant.

Other than the Tenant Contingency, Buyer's exercise of the Option shall not be subject to any contingency. Buyer represents and warrants to Seller that Buyer shall perform all investigations, inspections, studies, analyses, evaluations and other assessments as Buyer deems necessary to its decision whether or not to exercise the Option during the Option Period, and Buyer's decision whether or not to exercise the Option shall not be conditioned on or subject to any contingency. Furthermore, by executing and delivering the Notice of Exercise, Buyer acknowledges it will have completed all "due diligence" investigations and other feasibility, financing, suitability, title, survey, environmental, property condition, economic, demographic

and other evaluations, assessments and determinations relating to the Option Property as Buyer deems necessary to its decision to purchase the Option Property. *Provided*, Buyer shall not engage in, permit, contract for or cause any excavations, drilling, boring, or invasive or destructive testing of, on or in the Option Property except with Seller's express written consent, which Seller agrees not unreasonably to withhold but which consent may be conditioned on reasonable terms including Buyer's agreement to indemnify, defend and hold harmless Seller from any and all claims, liens, losses, damages, liabilities and obligations which may result from or be caused by such actions of Buyer, and further to condition such consent on Buyer's providing Seller with proof of insurance in such amounts and coverages as Seller reasonably requires with respect to such obligations of Buyer.

d. **Notice of Exercise.** If Buyer wishes to exercise the Option to purchase the Option Property, Buyer must give written notice to Seller prior to the end of the Option Period. The notice must state unequivocally that Buyer elects to exercise the Option and will purchase the Option Property on the terms and conditions stated in this Section 29 (the "**Notice of Exercise**"). Along with the Notice of Exercise, Buyer must deliver to Seller (i) the Option Tenant Commitment, and (ii) cash or immediately available funds in the amount of Eight Thousand Nine Hundred Sixty-Seven Dollars (\$8,967) (the "**Option Fee**") to secure Buyer's performance of its purchase of the Property pursuant to the Notice of Exercise. The Option Fee shall be applicable to the Option Price at the closing of Buyer's purchase of the Option Property pursuant to the Option (the "**Option Closing**") but shall also be deemed fully earned by Seller and fully non-refundable to Buyer when delivered by Buyer to Seller. The Option Fee must be delivered directly to Seller, not to or through Escrow Agent. If after giving the Notice of Exercise, the Option Tenant Commitment, and delivering the Option Fee, Buyer fails without legal excuse to complete its purchase of the Option Property by the Option Closing Date, the Option shall terminate, and Seller shall have the right to retain the Option Fee, free and clear of any claim or right of Buyer thereto, as liquidated damages to Seller for Buyer's failure to close in accordance with its exercise of the Option, and Buyer shall have no further right, title or interest of any kind in or to the Option Property. A qualified or conditional notice, such as, but not limited to, a notice stating Buyer desires to purchase the Option Property "subject to" certain conditions or words to that effect or which seeks to modify the Option Price or any other term for purchase of the Option Property as stated in this Section 29, shall be of no force and effect and shall be the same as giving no Notice of Exercise. In addition, the Notice of Exercise shall be of no force or effect unless accompanied by the Option Tenant Commitment, and the Option Fee. If Buyer delivers the Notice of Exercise but fails to deliver either the Option Tenant Commitment or the Option Fee therewith, the failure to deliver either the Option Tenant Commitment or the Option Fee shall constitute non-delivery of the Notice of Exercise. The Notice of Exercise must be delivered to Seller not later than the last day of the Option Period. If a Notice of Exercise conforming to this Section 29(c) is not delivered to Seller prior to the end of the Option Period, the Option shall automatically terminate, without requirement of any notice or notification from Seller, and Buyer shall have no further right, title or interest in or to the Option Property. Time is of the essence hereof. If the last day of the Option Period is a Saturday, Sunday or holiday on which banks are closed, the last day of the Option Period shall automatically be deemed to be the first business day thereafter.

e. **Option Closing Date.** The closing of the sale of Option Property to Buyer pursuant to the Option, at which time the Option Price, with credit for the Option Fee and subject to adjustments for closing costs and pro-rations, shall be delivered to Seller and the Option Property Deed shall be recorded, shall occur on the date stated in the Notice of Exercise, which date must, however, be not less than ten (10) calendar days nor more than thirty (30) calendar days after the date of Seller's receipt of the Notice of Exercise (the "**Option Closing Date**"). If

the Notice of Exercise specifies an Option Closing Date not in conformance with these terms, or fails to specify an Option Closing Date, the Option Closing Date shall conclusively be deemed to be the date that is thirty (30) days after delivery of the Notice of Exercise to Seller.

f. Title. At the Option Closing, Seller shall deliver title to the Option Property in the same condition as title thereto exists as of the date of this Agreement. Seller covenants and agrees not to permit or consent to the attachment of any lien or encumbrance on title to the Option Property between the date of this Agreement and the Option Closing Date (if any) excepting only those matters affecting title to which Buyer consents, which consent may be withheld or denied by Buyer in its sole and absolute discretion.

g. Waiver of Seller Disclosure Statement. Buyer and Seller agree and acknowledge that the Option Property constitutes "Commercial Real Estate" as defined in RCW 64.06.005. Buyer has been advised of its right to receive a completed seller disclosure statement ("Seller Disclosure Statement") regarding the Option Property pursuant to RCW Chapter 64.06. Buyer hereby waives (a) the right to receive the Seller Disclosure Statement from Seller pursuant to RCW Chapter 64.06, and (b) the right to rescind this Agreement based on Buyer's lack of receipt of such a Seller Disclosure Statement; provided, Seller shall provide an abbreviated Seller Disclosure Statement to Buyer within the time specified by the above-cited statute consisting solely of the "Environmental" section of the statutory form of the Seller Disclosure Statement. The provisions of this Section 29(f)(i) shall survive the Closing or termination of this Agreement.

h. Buyer's Post-Option Closing Covenants. Buyer agrees that certain covenants shall apply to Buyer's ownership of the Option Property following Closing and agrees to both the form of and to permit recording at the Option Closing of the Declaration of Covenants Regarding Transfer in the form of **Exhibit L-2** hereto (the "**Option Property Declaration of Covenants Regarding Transfer**"), and the Declaration of Covenants Regarding Permanent Covenants in the form of **Exhibit M** hereto, modified as discussed below (the "**Option Property Declaration of Covenants Regarding Permanent Covenants**"). Provided, however, that the final Option Property Declaration of Covenants Regarding Permanent Covenants recorded against the Option Property shall be modified from **Exhibit M** as follows:

i) The language of **Exhibit M**, including, but not limited to, the legal description, shall be modified to be applicable to the Option Property.

ii) A new section shall be added as Section 1 to **Exhibit M** and all subsequent section numbers shall be adjusted accordingly. The new Section 1 shall contain the following language:

Retail Use. At all times, approximately four thousand (4,000) to five thousand (5,000) square feet of the Real Property shall be used exclusively for restaurant and retail use, meaning space to be used exclusively for restaurant activities or activities defined as "retail" in KMC 18.20.2364, and consistent with permitted or conditionally permitted use allowances in the Downtown Commercial zone in KMC 18.25.020, as it may be amended from time to time. Fitness related uses, including, without limitation, "Sports Clubs" as defined in KMC 18.20.2850, shall not count toward the minimum retail use requirement of this section.

i. Closing Procedures; Deliveries; Closing Costs and Pro-Rations. Each of the parties shall deliver the following to Escrow Agent not later than 12:00 O'clock, Noon, on the business day immediately preceding the Option Closing Date (except as to the Funds, which may

be delivered by wire transfer on the morning of the Option Closing Date), with all documents or instruments to be signed by a party, duly executed and acknowledged if required:

i) Seller's Deliveries: Seller shall deliver each of the following or counterpart signature pages thereto, executed and, as required, acknowledged, by Seller:

- (1) the Option Deed in the form described below, subject only to the Permitted Exceptions;
- (2) Real Estate Excise Tax Affidavit;
- (3) two (2) executed originals of the Option Property Declaration of Covenants Regarding Transfer as described in this Section 29;
- (4) two (2) executed originals of the Option Property Declaration of Covenants Regarding Permanent Covenants as described in this Section 29;
- (5) closing or settlement statement prepared by Escrow Agent with amounts and adjustments in accordance with this Agreement and as mutually approved by Seller and Buyer; and
- (6) such other documents, instruments and instructions as may be required by Escrow Agent in accordance with standard escrow closing practices in the county in which the Option Property is located for closing of the transaction in accordance with this Agreement and as mutually approved by Seller and Buyer.

ii) Buyer's Deliveries: Buyer shall deliver each of the following or counterpart signature pages thereto, executed and, as required, acknowledged, by Buyer:

- (1) Funds in an amount sufficient to complete Buyer's purchase of the Option Property in accordance with this Agreement (the "Funds");
- (2) Real Estate Excise Tax Affidavit;
- (3) two (2) executed originals of the Option Property Declaration of Covenants Regarding Transfer as described in this Section 29;
- (4) two (2) executed originals of the Option Property Declaration of Covenants Regarding Permanent Covenants as described in this Section 29;
- (5) closing or settlement statement prepared by Escrow Agent with amounts and adjustments in accordance with this Agreement and as mutually approved by Seller and Buyer;
- (6) such other documents, instruments and instructions as may be required by Escrow Agent in accordance with standard escrow closing practices in the county in which the Option Property is located for closing of the transaction in accordance with this Agreement and as mutually approved by Seller and Buyer.

iii) Closing Costs. Closing costs shall be allocated and pro-rated between the parties as follows:

- (1) Seller and Buyer hereby expressly waive any requirement for escrow to ascertain, pro-rate and/or pay any utility charges relating to the Option Property, which Seller and Buyer agree they will take care of outside of escrow.
- (2) All obligations under service contracts which are not terminated by the Option Closing Date and all rentals received from Tenants, which tenancies have not been terminated, as of the Option Closing Date and other fees received as of the Option Closing under any Lease or other agreement concerning the Option Property shall be prorated and adjusted between the parties as of the Option Closing Date. All real and personal property taxes shall be prorated based upon the year in which they are assessed.
- (3) Seller shall pay the current portion of any assessments owing against the Option Property and due as of Option Closing Date, and Buyer shall assume and pay that portion of any assessments owing against the Option Property coming due after Option Closing Date;
- (4) The amount required for release of all monetary liens against the Option Property, if any, shall be paid by Seller.
- (5) The cost of an ALTA Standard Owner's Policy of Title Insurance shall be paid by Seller. The cost of any extended coverage, endorsements, or coverage in addition to that provided on the Standard form shall be borne by Buyer.
- (6) Seller shall pay all real estate excise taxes for transfer of title of the Option Property to Buyer.
- (7) Seller and Buyer shall each pay one-half of the escrow and closing fees and charges of Escrow Agent.
- (8) Seller shall pay the real estate commission owing to the Broker as provided in Section 28 of this Agreement;
- (9) If Buyer obtains financing for the purchase of the Option Property, Buyer shall pay all costs of financing, including, but not limited to, loan fees, lender attorney's fees, and the premium for the lender's policy of title insurance.
- (10) Each party shall bear its own legal and consulting fees incurred in connection with this transaction.

iv) Pro-Ration of Income and Expenses. All rents received from Tenants as of the Option Closing Date, if any, shall be pro-rated between Seller and Buyer as of the Option Closing Date. Rents from Tenants received after the Option Closing Date, if any, shall be applied first to the month in which Option Closing occurs, pro-rated as provided herein, then to rents accruing after Option Closing, then to rent owing for the period prior to the month in which Option Closing occurs. Utilities and expenses shall be pro-rated

based on the parties' respective periods of ownership. The Option Closing Date shall be an income and expense day for the Buyer.

j. Deed. At the Option Closing, Seller shall deliver to Buyer a statutory warranty deed to the Option Property subject only to the Permitted Exceptions (the "**Option Deed**").

k. Seller's Right to Use Option Property. At all times prior to the Option Closing Date, Seller shall have the right to use the Option Property in any manner consistent with its purposes as it may determine in its sole discretion. Such use may include, but is not limited to, demolishing structures located on the Option Property, regrading the Option Property, removing soils and other materials from the Option Property, restriping any parking spots located on the Option Property, storing equipment and vehicles on the Option Property, and/or locating temporary and/or permanent structures on the Option Property. Accordingly, Buyer acknowledges and by its signature below, consents to the fact that the Option Property may be in a different condition on the Option Closing Date than on the Effective Date.

l. Reserved.

m. Memorandum of Option Agreement. At Closing, Seller agrees to both the form of and to permit recording of a Memorandum of Option Agreement in substantially the form of **Exhibit P** hereto.

n. Terms Incorporated. The terms and conditions of Sections 21 through 26 of this Agreement shall be deemed incorporated into and made a part of the sale and conveyance of the Option Property to Buyer pursuant to this Section 29, the same as though re-stated here in full.

o. Non-Assignment. Buyer acknowledges Seller has specifically elected to enter this Agreement with Buyer based in material part on Seller's assessment of Buyer's qualifications and suitability, Buyer agrees the rights granted to Buyer under this Section 29 are not and shall not be assignable to or exercisable by any other person or entity other than Buyer without the prior written consent of the Seller, which consent may be granted, withheld or conditioned on such terms as Seller determines in its sole and absolute discretion. *Provided*, Buyer may assign Buyer's interests in this Agreement to a limited liability company, limited partnership, limited liability partnership or other business entity in which Main Street Property Group LLC or the principals of Main Street Property Group LLC control and manage the assignee, which assignment shall not require Seller's consent but will be effective only on Seller's receipt of notice thereof. The City will work cooperatively with Buyer to facilitate its investment and development intent.

30. Miscellaneous.

a. Survival of Covenants. Those covenants and undertakings expressly specified in this Agreement as surviving termination of this Agreement or surviving closing shall not terminate by transfer of title or be merged within the covenants of the Deed or any other document executed or delivered at closing.

b. Binding Nature; No Third Party Beneficiaries. All rights and obligations arising out of this Agreement shall inure to the benefit of and be binding upon the respective successors, heirs, assigns, administrators, executors and marital communities, if any, of the parties hereto. *Provided*, this Agreement is entered solely for the benefit of the parties and their respective heirs, assigns or successors. No other parties are intended as beneficiaries hereof and no person not

referred to in the first sentence of this subsection shall have a right to enforce or bring an action on this Agreement.

c. Time. Time is of the essence hereof.

d. Computation of Time; Business Days; Time for Notices. All references to time of day in this Agreement shall mean such time of day in the Pacific Time zone. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which the period of time runs shall be excluded, and the last day of such period shall be included, unless it is not a Business Day, in which case the period shall be deemed to run until the end of the next Business Day. The term "**Business Day**" as used here means any day on which banks in Kenmore, Washington are required to be open for business, excluding Saturdays and Sundays. All periods of time referred to in this Agreement in terms of a number of days shall mean calendar days unless expressly stated otherwise.

e. Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given and received (i) on the date of personal delivery, (ii) two (2) Business Days following the date of deposit in the United States first class mail, postage prepaid, and addressed as set forth below, or (iii) on the date of electronic transmission, either by electronic mail or facsimile (confirmation received) to the e-mail address or facsimile number listed below if so sent by 5:00 p.m., Pacific Time, provided such e-mail or facsimile is sent on a Business Day (and if not, then on the first Business Day after the sending of such electronic mail or facsimile). Said addresses and numbers may be changed by written notice sent in the same manner.

To Seller:	To Buyer:
City of Kenmore Attn: Rob Karlinsey, City Manager 18120 68th Ave NE Kenmore, WA 98028 Fax: 425-481-3236 Email: rkarlinsey@kenmorewa.gov <u>With a copy to:</u> Inslee Best Doezie & Ryder, P.S. Attn: Jackson T. Bennett 10900 NE 4th Street, Suite 1500 Bellevue, WA 98004 Fax: (425) 635-7720 Email: jbennett@insleebest.com	MSPT XI LLC Attn: Kelly Price/Kim Faust 12332 NE 115 th Place Kirkland, WA 98033 Fax: (425) 968-5887 Email: Kelly@mispgrouppllc.com kfaust@mispgrouppllc.com <u>With a copy to:</u> Perkins Coie LLP Attn: Kristine R. Wilson 10885 NE 4th Street, Suite 700 Bellevue, WA 98004 Fax: (425) 635-2400 Email: KRWilson@perkinscoie.com

f. Invalidity. If any provisions of this Agreement shall be invalid, void or illegal, it shall in no way affect, impair or invalidate any of the other provisions hereof.

g. No Partnership. Nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between Seller and Buyer or between Buyer

and any other party, or cause Seller or Buyer to be responsible in any way for the debts or obligations of the other arising from any act, contract, event or transaction undertaken pursuant to or in any other way related to this Agreement.

h. Commonly Used Terms. As used herein, “including” has the same meaning as “including, but not limited to”.

i. No Personal Liability of Officers or Directors. Buyer acknowledges that this Agreement is entered into by Seller as a municipal corporation and Buyer agrees that no individual officer, council member, employee or representative of Seller shall have any personal liability under this Agreement or any document executed in connection with the transactions contemplated by this Agreement. Likewise, Seller acknowledges that this Agreement is entered into by Buyer as a limited liability company and Seller agrees that no individual officer, director, member, employee or representative of Buyer shall have any personal liability under this Agreement.

j. Captions. The captions of this Agreement are inserted solely for the convenience of reference only and do not define, describe or limit the scope or intent of this Agreement or its terms.

k. Tax Deferred Exchange. Seller agrees to cooperate with Buyer in all ways reasonable in consummating this transaction as part of a simultaneous or non-simultaneous tax-deferred exchange pursuant to 1031 of the Internal Revenue Code of 1986, as amended, providing that (i) Seller shall not be required to take title to any property other than the Property, and (ii) the Closing Date shall not be delayed or extended thereby. Buyer has the right to assign its rights hereunder to an accommodation entity (“**Intermediary**”) who will cause the closing to occur on Buyer’s behalf. In the event of such assignment, all of Buyer’s liabilities, representations and warranties under this Agreement shall remain those of Buyer, and Seller shall not seek recourse against the Intermediary with respect to such liabilities or for the breach of any such representations or warranties. Seller shall execute all documentation reasonably required by the Intermediary to memorialize said relief from liability as to the Intermediary. Seller agrees that performance by the Intermediary in effectuating an exchange will be treated as if such performance were made by Buyer, and Buyer shall remain the primary obligor for the full and timely performance by such Intermediary of all obligations of the Buyer under this Agreement. In the event of any breach of any such obligations of Buyer, Seller shall proceed directly against Buyer. Seller shall not be required to assume any liabilities as a result of the exchange transaction that are in addition to those which would exist if the transaction were effectuated as a sale and not an exchange.

l. Confidentiality. If for any reason this Agreement is terminated or canceled and does not close, then all records, documents and materials of any kind provided between Seller and Buyer shall promptly be returned to the provider, and neither party shall publish or disclose to third parties or use for its own benefit any financial, business, proprietary or other information provided or disclosed by the other party in connection with this Agreement. The parties agree that any all media communications (e.g., press releases) or public announcements (e.g., website updates) distributed by the parties regarding this Agreement and its execution or implementation shall be mutually reviewed and agreed upon. The agreement stated in this Section shall survive closing or termination of this Agreement.

m. Further Assurances. If at any time either of the parties reasonably determines that any further assignments, conveyances, assurances or instruments are reasonably necessary or

desirable to carry out the provisions of this Agreement, the appropriate Party shall execute and deliver, or cause to be executed and delivered, any and all property assignments, conveyances, assurances, or instruments and to do, or cause to be done, all things reasonably necessary or property to carry out fully the provisions of this Agreement, provided that such things shall be at no additional material cost, expense or liability to such party beyond those costs, expenses and liabilities set forth in or contemplated by this Agreement.

n. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original thereof, and such counterparts shall together constitute but one and the same agreement. Each party (i) agrees to permit the use, from time to time and where appropriate, of telecopied signatures in order to expedite the transaction contemplated by this Agreement, (ii) intends to be bound by its respective telecopied signature, (iii) is aware that the other party will rely on the telecopied signature, and (iv) acknowledges such reliance and waives any defenses to the enforcement of this Agreement and the documents effecting the transaction contemplated by this Agreement based on the fact that a signature was sent by telecopy. As used herein, the term "telecopied signature" shall include any signature sent via email in portable document format (".pdf").

o. Waiver. Failure of any party at any time to require performance of any provision of this Agreement shall not limit that party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

p. Applicable Law. This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Washington.

q. Indemnified Parties. Any indemnification contained in this Agreement for the benefit of a party shall extend to such party's employees, attorneys and agents and shall survive closing or the termination of this Agreement as the case may be.

r. Entire Agreement; No Oral Modifications. This Agreement, including its Recitals and the Exhibits referred to herein and attached hereto, all of which Recitals and Exhibits are incorporated into and made a part of this Agreement, along with the original of all documents hereafter signed by the parties in the form of the Exhibits hereto or in such form as is otherwise agreed upon by the parties in accordance with this Agreement, constitute the entire contract, agreement, understanding and arrangement by and between the parties with respect to the subject matter hereof. This Agreement cannot be changed or modified other than by a written agreement executed by both parties. All references herein to "this Agreement" or "the Agreement" shall mean this Agreement and all of its Recitals and Exhibits as well as any and all amendments and addenda hereafter mutually executed by the parties which state they are included in or part of this Agreement.

[Signatures on following page]

DATED the day and year first written above.

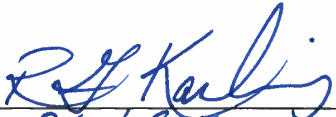
SELLER: CITY OF KENMORE, a Washington municipal corporation By:  Name: <u>Robert G. KARLINSEY</u> Title: <u>CITY MANAGER</u>	BUYER: MSPT XI LLC, a Washington limited liability company By:  Name: <u>Kelly Price</u> Title: <u>President of Main Street Property Group LLC, Manager</u>
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EXHIBIT A
[LEGAL DESCRIPTION OF EXISTING PROPERTY]

PARCEL B OF KENMORE BOUNDARY LINE ADJUSTMENT NO. 2012-048 RECORDED UNDER
KING COUNTY RECORDING NO. 2012100390001.

EXHIBIT B

**[DESCRIPTION OF TOWN GREEN AND PAVILLION PARCELS – LEGAL DESCRIPTIONS
TO BE SUBSTITUTED PRIOR TO CLOSING]**

The Pavilion Parcel is described as follows:

The parcel depicted as the “Pavilion Parcel” on the aerial photograph shown below.

The Town Green Parcel is described as follows:

A parcel depicted as the “Town Green Parcel” on the aerial photograph shown below.

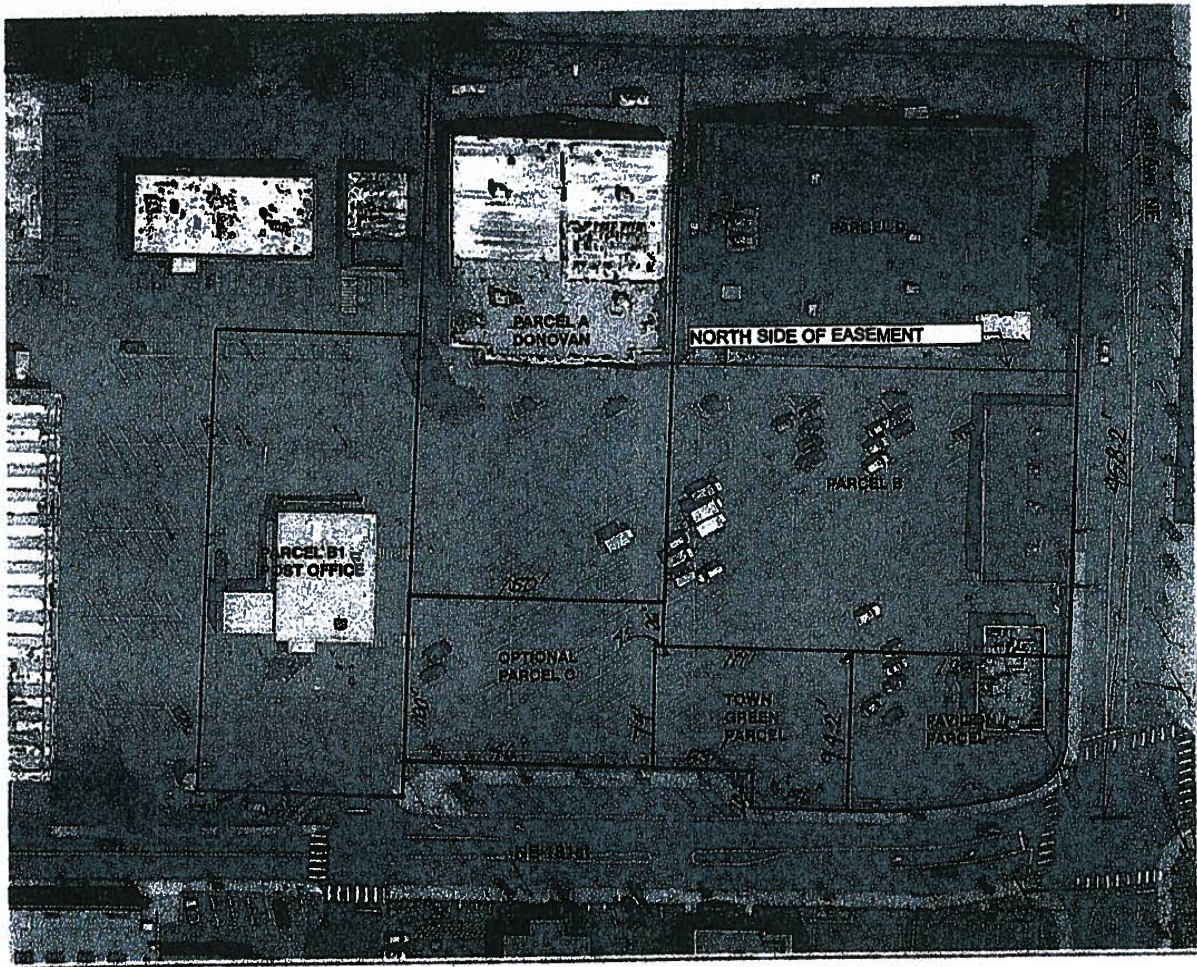


EXHIBIT C-1
[DESCRIPTION OF COMMERCIAL PROPERTY – LEGAL DESCRIPTIONS TO BE
SUBSTITUTED PRIOR TO CLOSING]

Parcel D is legally described as follows:

A parcel depicted as “Parcel D” on the aerial photograph shown below.

Parcel B is legally described as follows:

A parcel depicted as “Parcel B” on the aerial photograph shown below.

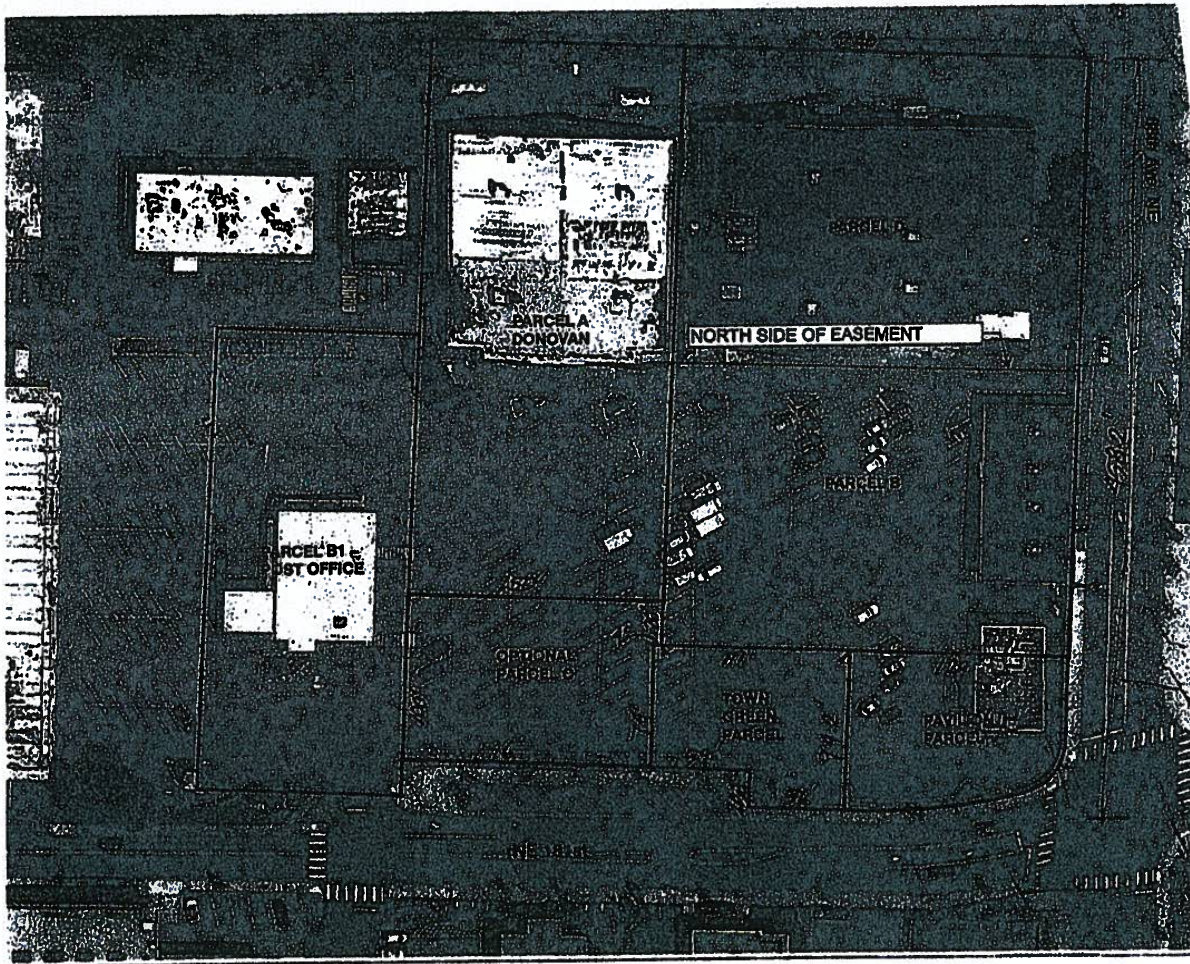


EXHIBIT C-2
[DESCRIPTION OF OPTION PROPERTY – LEGAL DESCRIPTION TO BE SUBSTITUTED
PRIOR TO CLOSING]

The Option Property/Parcel C is described as follows:

A parcel depicted as “Optional Parcel C” on the aerial photograph shown below.

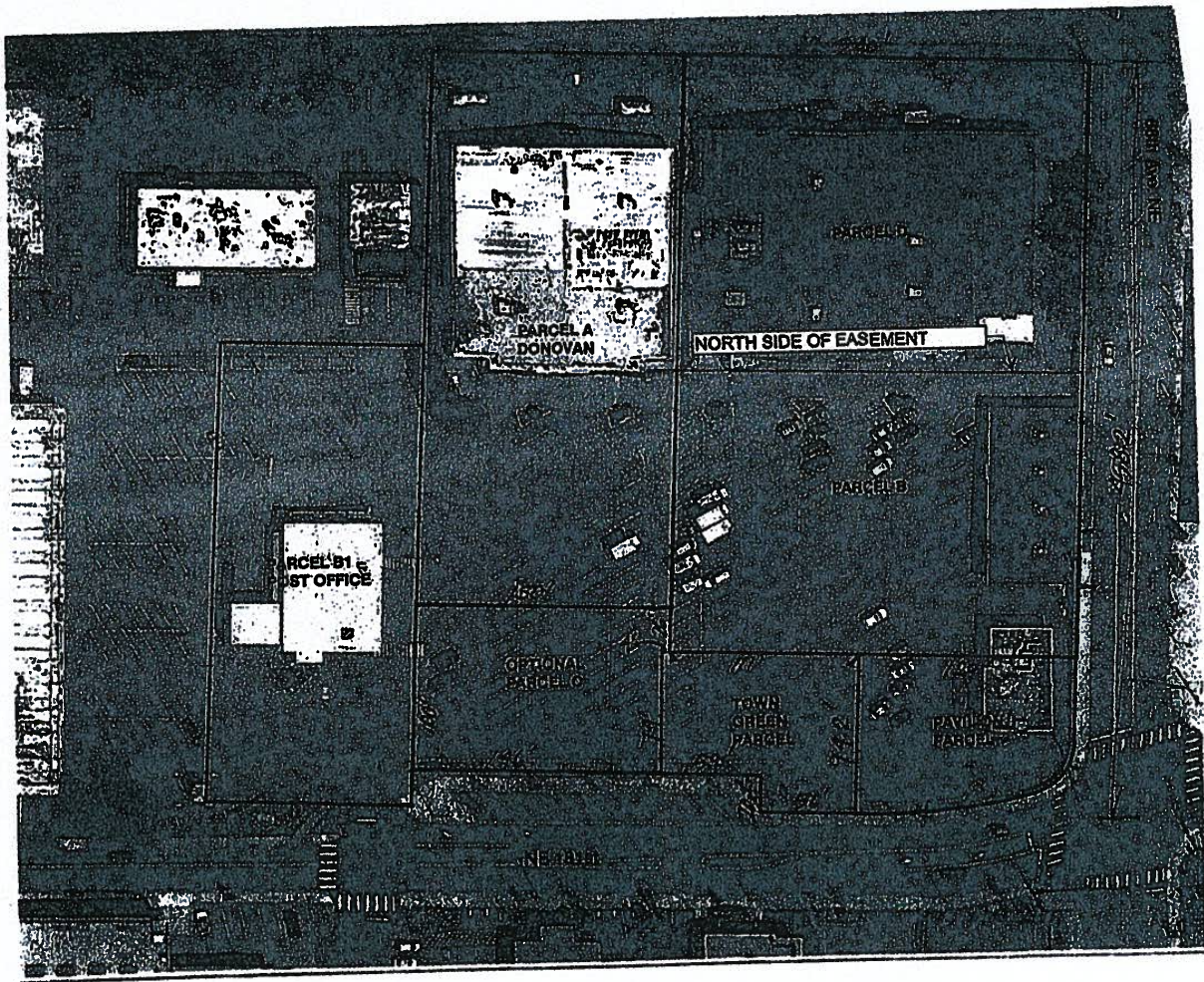


EXHIBIT D
[RENT ROLL]

Attached

Rent Roll - Lease Charges

Page 1

All Selected Properties From Date: 06/12/2014 By: Property Utility																							
Lease	Lease From	Lease To	Security Deposit	Leased Credit Amount	Assessment Type	Utility	Area	Acres	Term	Assessment From	Assessment To	Change From	Change To	Monthly Amount	Budget Fee	Gross Amount	Anal. per Area	Assessed per Area	Anal. per Area				
0977 - Kenmore Village - Big 3 Markets																							
6750	Northwest Window & Door	Retail - Gross	02/01/2013	10/31/2014	2,700.00	0.00	Original Lease	6750	Net Re.	5,447.00	21	02/01/2013	10/31/2014	rent	02/01/2013	10/31/2014	2,700.00	0.00	2,700.00	0.49	32,400.00	5.94	
6754	North Day Market	Retail - Gross	01/01/2013	1/30/00	0.00	Original Lease	Net Re.	3	01/01/2013	03/31/2013				rent	01/01/2014		2,700.00	0.00	2,700.00	0.49	32,400.00	5.94	
Total																							
Summary by Charge																							
Amount																							
0.00																							
4,400.00																							
Total																							
0978 - Kenmore Village - Big 3 Markets																							
6734	ESNO. LLC	Retail - Gross	11/01/2010	10/31/2014	0.00	0.00	Original Lease	Net Re.	48	11/01/2010	10/31/2014			rent	04/01/2012	10/31/2014	1,800.00	0.00	1,800.00	0.75	21,600.00	9.16	
Total																							
Summary by Charge																							
Amount																							
0.00																							
1,800.00																							
Total																							
0979 - Kenmore Village - Big 3 Markets																							
6734	U-Haul Service	Retail - Net	10/01/2009	08/31/2015	0.00	0.00	Original Lease	Net Re.	68	10/01/2009	08/31/2015	rent	08/12/2013	08/31/2014	rent	08/12/2013	08/31/2014	4,241.25	0.00	4,241.25	0.00	50,895.00	0.00
Total																							
Summary by Charge																							
Amount																							
4,241.25																							
4,241.25																							
Total																							
Grand Total																							
7,800.00 0.00 15,887.00 10,441.25 0.00 10,441.25 0.65 125,295.00 7.91																							

Tuesday, May 13, 2014
12:57 PM

**EXHIBIT E
TENANT ESTOPPEL CERTIFICATE**

TO: [Buyer]

AND TO: CITY OF KENMORE
18120 68th Ave NE
Kenmore, WA 98028

Ladies and Gentlemen:

The undersigned, _____ a
[corporation/partnership/limited liability company/sole proprietorship] ("Tenant"), is the tenant under that certain Lease dated _____ (said Lease, as amended and supplemented by the instruments, if any, described in paragraph 1 below, is referred to herein as the "Lease"). The City of Kenmore ("Landlord") is the landlord under the Lease and the Lease covers the premises located at _____, ("Premises"). Tenant understands Buyer may be acquiring the Landlord's interest in the Premises and the Lease and that the Buyer and Landlord will be relying on the truth and accuracy of the matters described in this estoppel certificate in incurring financial obligations and proceeding to complete the purchase and sale of the property of which the Premises are a part. The truth and accuracy of the certifications contained herein may be relied upon by Landlord, Buyer and any lender to Buyer. Based on such understandings, Tenant represents to the Buyer and Landlord and certifies as of the date of execution of this certificate that:

1. The Lease, and all amendments and supplements thereto, are described as follows:
_____. Said documents and instruments constitute the entire agreement between Landlord and Tenant with respect to the Premises.
2. The Lease is in full force and effect according to its terms as written in the documents described in Paragraph 1 above.
3. The term of the Lease is presently scheduled to expire on _____, 20____. There are no rights of extension or renewal remaining under the terms of the Lease except: _____.
4. Tenant has no expansion options or rights of first offer, rights of first refusal, exclusives, right to lease other premises, or rights to have Landlord perform Tenant's obligations under leases of other premises.
5. Tenant acknowledges the Lease can be terminated upon twelve (12) [six (6)] months' prior written notice to Tenant. Tenant has not received any oral or written promise or assurance of any kind that Landlord (or any successor owner of the property) has waived such right of early termination.
6. There has not been filed by or against Tenant a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States or any state thereof.

7. The undersigned, as the holder of the Tenant's interest under the Lease, is in occupancy of all the Premises covered by the Lease and is actively conducting its business therein, which business is the permitted use specified in the Lease. Tenant has not subleased, and there are no other parties in possession of, any portion of the Premises.
8. The Lease has not been assigned, mortgaged, pledged or otherwise encumbered by Tenant, nor has all or any portion of the Premises been sublet, except as follows: [if none, then so insert the word "none"]

9. Tenant is current in payment of all Base Rent and all estimated Additional Rent has been paid in full for the period ending _____, 20___. No rent has been paid more than thirty days in advance.
10. Tenant has no claim of offset or defense against either the rent or the Landlord, nor any other claim or counterclaim against the Landlord under the Lease, including, without limitation, claims to concessions, rebates or abatements in rent.
11. The monthly Base Rent is _____. In addition, Tenant presently pays _____ on a monthly basis for its share of estimated common area expenses, real estate taxes and landlord's insurance premiums.
12. Tenant is not aware of and has not given any notice of any defaults on the part of Landlord under the Lease, and Tenant is not aware of the occurrence of any event which, with the passage of time or the giving of notice (or both), would constitute a default by Landlord thereunder.
13. Except for its security deposit of _____ and last month's rent of _____, Tenant has no claim against Landlord for any security, last month's rent or other deposits under the Lease. To the best of Tenant's knowledge, Landlord has not waived any of Landlord's rights under the Lease.
14. Any payments by Landlord to Tenant for tenant improvements that are required under the Lease have been made.

The undersigned has executed this estoppel certificate as of the ____ day of _____, 2014.

Very truly yours,

By: _____
Its: _____

EXHIBIT F

[DEED]

WHEN RECORDED RETURN TO:

STATUTORY WARRANTY DEED

THE GRANTOR, _____, for and in consideration of _____, in hand paid, conveys and warrants to _____, THE GRANTEE, the following described real estate (the "Property"), situated in the County of _____, State of Washington:

See Exhibit A attached hereto and by this reference incorporated herein.

SUBJECT TO all matters of record and those matters identified on Exhibit B hereto (the "Permitted Exceptions").

Abbreviated Legal Description:

Tax Account No.:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

[illegible]

I certify that I know or have satisfactory evidence that the persons appearing before me and making this acknowledgment are the persons whose true signatures appear on this document.

On this ____ day of _____, 2013, before me personally appeared _____ and _____, to me known to be the _____ and _____, respectively, of _____, the _____ that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said _____, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for the State of Washington,
residing at _____
My commission expires: _____
[Type or Print Notary Name]

(Use This Space for Notarial Seal Stamp)

EXHIBIT A TO DEED

Legal Description

EXHIBIT B TO DEED

Permitted Exceptions

EXHIBIT G **ASSIGNMENT AND ASSUMPTION OF LEASES**

This Assignment and Assumption of Leases (the “**Assignment**”), is entered as of the _____ day of _____, 2014, by, between and among _____ (“**Assignor**”), and _____ (“**Assignee**”), all of whom agrees as follows:

In consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Property.** The “**Property**” means the real property located in King County, Washington, which is legally described in Exhibit A attached to this Assignment, together with the building, structures and other improvements located thereon.

2. **Leases.** The “**Leases**” means the leases affecting the Property listed on Exhibit B attached to this Assignment.

3. **Security Deposits.** “**Security Deposits**” means the tenant refundable security deposits and other refundable deposits held by or for Assignor on account of tenants under the Leases with respect to which Assignee received a credit at the closing of the transaction pursuant to this Assignment and which are also listed on Exhibit B.

4. **Assignment.** Assignor hereby grants, transfers and assigns to Assignee the entire right, title and interest of Assignor in and to the Leases and the Security Deposits.

5. **Assumption.** Assignee hereby assumes the covenants, agreements and obligations of Assignor as landlord or lessor under the Leases which are applicable to the period and required to be performed from and after the date of this Assignment, but not otherwise, and Assignee further assumes all liability of Assignor for the proper refund or return of the Security Deposits if, when and as required by the Leases. No person or entity, other than Assignor shall be deemed a beneficiary of the provisions of this Section 5.

6. **Indemnification.** Assignor shall indemnify and hold Assignee harmless from and against all obligations of the “lessor” or “landlord” under the Leases to the extent such obligations were applicable to the period and required to be performed prior to the date of this Assignment. Assignee shall indemnify and hold Assignor harmless from and against all obligations of the “lessor” or the “landlord” under the Leases to the extent that such obligations are applicable to the period and required to be performed from and after the date of this Assignment, including but not limited to all obligations relating to the Security Deposits hereby assigned to Assignee.

7. **Legal Expenses.** If either party to this Assignment brings suit or otherwise becomes involved in any legal proceedings seeking to enforce the terms of this Assignment, or to recover damages for their breach, the prevailing party shall be entitled to recover its costs and expenses (including fees of attorneys, expert witnesses, accountants, court reporters and others) incurred in

connection therewith including all such costs and expenses incurred in: (a) in trial and appellate court proceedings, (b) in connection with any and all counterclaims asserted by one party to this Assignment against another whether or not such counterclaims arise out of or are otherwise related to this Assignment, (c) in bankruptcy or other insolvency proceedings, and (d) in post-judgment collection proceedings.

8. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

9. Power and Authority. Each party represents and warrants to the other that it is fully empowered and authorized to execute and deliver this Assignment, and the individual signing this Assignment on behalf of such party represents and warrants to the other party that he or she is fully empowered and authorized to do so.

10. Counterparts. This Assignment may be executed in several counterparts, each of which shall be deemed an original, but all of, which shall constitute one agreement, binding on all parties.

[Signatures Follow]

DATED the day and year first written above.

ASSIGNOR:

[]

By: _____
Name: _____
Title: _____

ASSIGNEE:

[]

By: _____
Name: _____
Title: _____

EXHIBIT A to Assignment and Assumption of Leases

[Legal Description]

EXHIBIT B to Assignment and Assumption of Leases

[Leases]

EXHIBIT H
ASSIGNMENT AND ASSUMPTION OF SERVICE CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF SERVICE CONTRACTS ("Assignment") is made and entered as of the _____ day of _____, 2014, by and between _____ ("Seller"), and _____ ("Buyer"), with reference to the following facts:

A. Seller and Buyer have entered into that certain Real Estate Purchase and Sale Agreement dated as of _____ ("Purchase Agreement"), in which Seller has agreed to sell and Buyer has agreed to purchase the real property described on **Exhibit "1"** attached thereto and the improvements located thereon (collectively, the "Property").

B. Pursuant to the Purchase Agreement, Seller has agreed to assign to Buyer all of Seller's right, title and interest to those certain Contracts relating to the Property and described on **Exhibit "2"** attached hereto (the "Contracts").

THEREFORE, for valuable consideration, Seller and Buyer agree as follows:

1. Assignment. Seller hereby assigns, sells and transfers to Buyer without recourse and without representation or warranty, all of Seller's right, title and interest in and to the Contracts as of the date hereof. Seller agrees to indemnify, defend and hold Buyer harmless from and against any and all amounts due, charges, or costs under the Contracts for the period prior to the date hereof.

2. Assumption. With respect to the Contracts and the obligations thereunder, Buyer hereby assumes all of the benefits and burdens of the Contracts as of the date hereof. Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all amounts due, charges, or costs under the Contracts for the period prior from and after the date hereof.

3. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same instrument.

4. Miscellaneous. This Assignment shall be binding on the parties and their respective successors and assigns. The headings to Sections of this Assignment are for convenient reference only and shall not be used in interpreting this Assignment.

DATED as of the day and year first written above.

SELLER:	BUYER:
[]	[]
By: _____ []	By: _____ []

EXHIBIT "1" TO ASSIGNMENT AND ASSUMPTION OF SERVICE CONTRACTS
LEGAL DESCRIPTION

[Legal Description]

[End of Legal Description]

EXHIBIT “2” TO ASSIGNMENT AND ASSUMPTION OF SERVICE CONTRACTS

LIST OF CONTRACTS

Vendor	Subject Matter of Contract
[]	[]

**EXHIBIT I
BILL OF SALE**

_____, a _____ ("Grantor"),
for and in consideration of the sum of Ten Dollars (\$10) and other good and valuable
consideration in hand paid by _____, a
_____ ("Grantee"), the receipt and sufficiency of which are
hereby acknowledged, does hereby GRANT, SELL, CONVEY, ASSIGN AND DELIVER to
Grantee all right, title and interest in the following property, excluding without limitation any
personal property owned by the tenants of the real property more particularly described on
Exhibit 1 attached hereto and incorporated herein by this reference (the "**Property**") or owned by
the property manager of the Property (all of the following being hereinafter collectively referred
to as the "**Personal Property**"):

- (a) All fixtures and equipment attached to or located on the Property; and
- (b) All assignable or transferable intangible property used in connection with the
Property, including (i) any guaranties and warranties pertaining to the Property, (ii) all rights to
obtain utility service in connection with the Property, and (iii) assignable licenses and other
governmental permits and permissions relating to the Property.

TO HAVE AND TO HOLD the Personal Property, together with all and singular the
rights and appurtenances thereto in anywise belonging unto Grantee, its successors and assigns
forever.

Grantor represents and warrants to Grantee that Grantor owns the Personal Property free
and clear of all liens, security interests and encumbrances, and that Grantor has the unrestricted
ability and authority to convey the Personal Property to Grantee.

EXCEPT AS SET FORTH HEREIN, GRANTOR HAS NOT MADE, AND DOES NOT
HEREBY MAKE, ANY REPRESENTATION, WARRANTY OR COVENANT, EXPRESS OR
IMPLIED, WITH RESPECT TO THE HABITABILITY, MERCHANTABILITY,
SUITABILITY OR FITNESS FOR PARTICULAR USE OF THE PERSONAL PROPERTY
OR ANY COMPONENT THEREOF, IN ANY RESPECT WHATSOEVER OR IN
CONNECTION WITH OR FOR THE PURPOSES AND USES OF GRANTEE, OR, EXCEPT
FOR THE WARRANTIES EXPRESSLY CONTAINED HEREIN, ANY OTHER
REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND AND CHARACTER,
EXPRESS OR IMPLIED, WITH RESPECT THERETO; AND THE PERSONAL PROPERTY
IS SOLD, TRANSFERRED AND ASSIGNED TO GRANTEE "AS IS" AND WHERE IS".

IN WITNESS WHEREOF, this Bill of Sale is executed by Grantor the _____ day of _____, 20____.

Grantor:

_____ ,
a _____

By: _____
[Print Name] _____
Its: _____

STATE OF _____)
) §
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who acknowledged that he signed this instrument and on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of _____, a _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 20____.

(SEAL/STAMP)

Print Name: _____
 NOTARY PUBLIC in and for the state of _____
 residing in _____
 My appointment expires _____

EXHIBIT J

**SELLER CERTIFICATE RE
REPRESENTATIONS AND WARRANTIES**

The undersigned, as Seller under a Real Estate Purchase and Sale Agreement dated as of _____, (the "Purchase Agreement") between _____ ("Seller"), and _____ ("Buyer"), does hereby certify to Buyer as follows:

Except as otherwise disclosed in writing to Buyer prior to the date hereof, the representations and warranties set forth in **Section 17** of the Purchase Agreement are hereby reaffirmed as being true, correct, and complete as of the date hereof.

Seller's liability hereunder shall be subject to the limitations set forth in the Purchase Agreement.

Dated as of this ____ day of _____, 2014.

SELLER:

[]

By: _____
[]

EXHIBIT K

**BUYER CERTIFICATE RE
REPRESENTATIONS AND WARRANTIES**

The undersigned, as Buyer under a Real Estate Purchase and Sale Agreement dated as of _____, (the "Purchase Agreement") between _____ ("Seller"), and _____ ("Seller"), does hereby certify to Seller as follows:

Except as otherwise disclosed in writing to Seller prior to the date hereof, the representations and warranties set forth in **Section 18** of the Purchase Agreement are hereby reaffirmed as being true, correct, and complete as of the date hereof.

Buyer's liability hereunder shall be subject to the limitations set forth in the Purchase Agreement.

Dated as of this ____ day of _____, 2014.

BUYER:

[]

By: _____
[]

EXHIBIT L-1
[DECLARATION OF COVENANTS REGARDING TRANSFER]

AFTER RECORDING RETURN TO:

Inslee, Best, Doezie & Ryder, P.S.
Attn: Jackson T. Bennett
777 - 108th Avenue N.E., Ste. 1900
P.O. Box 90016
Bellevue, WA 98009-9016

DECLARATION OF COVENANTS REGARDING TRANSFER

Grantor:	MSPT XI LLC, a Washington limited liability company
Grantee:	City of Kenmore, a Washington municipal corporation
Short Legal Description:	[Complete legal description on Exhibit. A]
Assessor's Property Tax Parcel/Account Number(s):	
Reference Number(s) of Documents Assigned or Released:	N/A

DECLARATION OF COVENANTS REGARDING TRANSFER

THIS DECLARATION OF COVENANTS REGARDING TRANSFER (this “**Declaration**”) is hereby made, declared and granted as of the _____ day of _____, 20____, by the Declarant, MSPT XI LLC, a Washington limited liability company, with respect to the real property legally described on **Exhibit A** hereto consists of “**Parcel D**” and “**Parcel B**” (the Parcel D and the Parcel B are collectively referred to herein as the “**Real Property**”), as follows:

WHEREAS, Declarant is the owner in fee title of the Real Property; and

WHEREAS, Declarant has received fee title to and ownership of the Real Property by way of statutory warranty deed to Declarant from its immediate predecessor in ownership of the Real Property, the City of Kenmore, a Washington municipal corporation (“**City**”), pursuant to that certain Agreement for Purchase, Sale and Development of Real Property dated as of the _____ day of _____, 2014 (the “**Purchase Agreement**”), which Purchase Agreement expressly made the declaration and recording of the covenants stated herein as a condition to the transaction described therein; and

WHEREAS, Declarant has agreed to and hereby makes the covenants declared herein;

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which are acknowledged by Declarant, Declarant hereby makes, grants and declares the following covenants with respect to the Real Property:

1. Covenant Not To Re-Sell. Declarant shall not, and shall not have the lawful authority to, sell, transfer, or otherwise permit any change of ownership of the Real Property that would result in Main Street Property Group LLC or the principals of Main Street Property Group LLC not being in control and managing the Real Property or any successor business entity (any and all of the foregoing, a “**Change of Ownership**”) prior to an approved site plan for the Real Property and completion (meaning a Certificate of Occupancy, or Temporary Certificate of Occupancy has been obtained) of at least ten thousand (10,000) square feet of new construction at the Real Property. A sale or transfer in which Declarant’s members or managers maintain a controlling aggregate interest in the Real Property does not constitute a Change of Ownership.

2. Covenant Regarding New Construction. All site plan applications as submitted from time to time with respect to the Real Property shall contemplate not less than ten thousand (10,000) square feet of new construction on Parcel B (the “**Parcel B New Construction**”).

3. Construction Timeline. Declarant shall have obtained a grading permit and commenced construction of the Parcel B New Construction by no later than the date that is three years from the date that this Declaration is recorded in the real property records of King County, Washington (the “**Required Completion Date**”). For each day after the Required Completion Date that the Declarant has not obtained the required grading permit and commenced construction of the Parcel B New Construction, Declarant shall pay to the City a sum of Five Hundred Dollars (\$500) per day, unless such failure is caused by reason of Force Majeure (as defined below); *provided*, that

the amount owed to the City for any delay in obtaining a grading permit and commencing construction of the Parcel B New Construction shall be capped at twenty thousand dollars (\$20,000) per twelve (12) month period commencing on the Required Completion Date. Declarant and the City intend that such amount constitutes liquidated damages on account of the difficulty of measuring actual damages; and in order to avoid other costs and expenses to either party in connection with Declarant's failure to complete the Parcel B New Construction as required by this Section. Declarant and the City believe, and by their signature below acknowledge, said amount to be a fair estimate of actual damages. At its sole discretion, the City may elect to extend the construction timeline contained in this section.

4. **Sidewalk, Landscaping and Street-side Improvements.** As a condition to any permit for construction of improvements on the Real Property, such improvements shall include sidewalks and landscaping along the property borders of the Real Property. The sidewalks and landscaping shall be of such nature consistent with those required under the City's regulations in KMC Chapter 18. Such improvements shall be installed along or adjacent to any portion of the Real Property that borders or is adjacent to a public street. Absence of such improvements for prior development or elsewhere along such public street shall not excuse compliance with this requirement as to any development hereafter constructed on the Real Property. The requirements of this section shall be referred to as the "**Sidewalk, Landscaping and Street-Side Improvements Requirement.**"

5. **Demolition Requirement.** By no later than August 1, 2016, Declarant shall have obtained a demolition permit from the City and shall demolish the entire building on the northern portion of the Real Property (the contiguous building of approximately 26,000 square feet between the current Kenmore Camera building and 68th Avenue). Within 120 days after commencement of demolition, Declarant shall 1) have completed site cleanup the former building site in a presentable fashion; or 2) begin construction of a new building on the former building site. Under no circumstances shall the former building site become a vacant, unkempt "weed lot". The requirements of this section shall be referred to as the "**Demolition Requirement.**"

6. **Utility Lines.** All electric power transmission and other utility lines and conduits associated with any construction or improvements on the Real Property or in right-of-way adjacent to the Real Property shall be placed underground so that no utility lines are located above ground. Any costs associated with such undergrounding shall be borne by Declarant. Such undergrounding work shall be performed at a time fully appropriate to coordinate with construction of other underground work on the Real Property. The requirements of this section shall be referred to as the "**Utility Undergrounding Requirement.**"

7. **Termination and Release of Covenants.** Upon completion of the New Construction, the Sidewalk, Landscaping and Street-Side Improvements Requirement, the Demolition Requirement, and the Utility Undergrounding Requirement required by this Declaration, and issuance of all Certificates of Occupancy or Temporary Certificates of Occupancy or at such other time prior to issuance of all Certificates of Occupancy or Temporary Certificates of Occupancy as the City shall determine in its sole discretion, the City shall execute and cause to be recorded with the appropriate recording office in King County, Washington a termination and release of this Declaration in the form of **Exhibit B** hereto, the terms and

conditions of which are incorporated into and made a part of the terms of this Declaration (the “**Termination and Release**”). The Termination and Release shall be effective upon the date the Termination and Release is recorded in King County, Washington and shall have the effect of terminating this Declaration and releasing the Declarant, its successors and assigns, from further obligations under this Declaration. Declarant, by its signature below, hereby consents to the City unilaterally recording the Termination and Release as discussed in this Section 8 without further action by, providing further notice to, or obtaining further permission from Declarant.

8. **Burden Running with the Land; Benefit In Gross.** Declarant intends that the burdens of the covenants contained in this Declaration shall touch and concern and run with the Real Property such that they will be binding upon Declarant’s heirs, successors, and assigns unless and until terminated as provided in Section 8. Declarant intends that the benefits of the covenants contained in this Declaration shall be in gross and shall inure to the benefit of and be enforceable by the City against it and all future heirs, successors and assigns.

9. **Force Majeure.** As used in this Declaration, the term “**Force Majeure**” means “acts of God” or the public enemy; civil war; insurrection or riots; fires; explosions or serious accidents; strikes or labor disputes; inability to obtain necessary materials, accessories, equipment, or parts from the manufacturers thereof not caused or contributed to by the party claiming delay for such reason; abnormal weather or unforeseen, abnormal soils conditions which necessitate delays; or other abnormal and unforeseen event or condition not caused by or contributed to and beyond the reasonable control of the party claiming excused delay for such reason.

10. **No Third Party Rights.** The provisions of this Declaration are intended for the benefit of, and may only be enforced by, the parties hereto and their respective successors and permitted assigns. None of the rights or obligations of the parties herein set forth (or implied) are 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, consultant, subcontractor, worker, supplier, mechanic, insurer, surety, guest, member of the public, or other third parties having dealing with either of the parties hereto or involved, in any manner, in the Property or the Project.

11. **Captions and Headings.** Captions and headings used in this Declaration are for convenience of reference only and are not part of the terms of this Agreement or to be used to construe, interpret, modify, qualify, vary or supplement any term, condition, covenant or provision of this Declaration.

12. **Defined Terms.** Initially-capitalized terms used by not defined herein shall have the meanings stated in the Purchase Agreement.

DATED the day and year first written above.

[Signature/Acknowledgment]

EXHIBIT A TO DECLARATION OF COVENANTS REGARDING TRANSFER

The Parcel D is legally described as follows:

The Parcel B is legally described as follows:

EXHIBIT B TO DECLARATION OF COVENANTS REGARDING TRANSFER

AFTER RECORDING RETURN TO:

Inslee, Best, Doezie & Ryder, P.S.
Attn: Jackson T. Bennett
777 - 108th Avenue N.E., Ste. 1900
P.O. Box 90016
Bellevue, WA 98009-9016

**TERMINATION AND RELEASE OF DECLARATION OF COVENANTS REGARDING
TRANSFER**

Grantor:	MSPT XI LLC, a Washington limited liability company
Grantee:	City of Kenmore, a Washington municipal corporation
Short Legal Description:	[Complete legal description on Exhibit. A]
Assessor's Property Tax Parcel/Account Number(s):	
Reference Number(s) of Documents Assigned or Released:	N/A

**TERMINATION AND RELEASE OF DECLARATION OF COVENANTS REGARDING
TRANSFER**

THIS TERMINATION AND RELEASE OF DECLARATION OF COVENANTS REGARDING TRANSFER (the “**Termination and Release**”) is executed by the City of Kenmore, a Washington municipal corporation, (the “**City**”) for the purpose of terminating the Declaration of Covenants described below.

RECITALS

A. MSPT XI LLC, a Washington limited liability company (“**Declarant**”), is the owner of the real property described in **Exhibit A** hereto and incorporated herein by this reference (the “**Property**”). The Property is burdened by that certain Declaration of Covenants dated _____ and recorded under King County Recording No. _____ (the “**Declaration**”).

B. Pursuant to the terms of the Declaration, the benefits of the covenants contained therein inure to and are enforceable by the City, and the City is required to terminate and release the Declaration upon issuance of all Certificates of Occupancy or Temporary Certificates of Occupancy required by the Declaration or at such other time as the City, in its sole discretion, determine.

C. Pursuant to Section 6 of the Declaration, the City desires to terminate the Declaration

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, the City agrees as follows:

1. Termination and Release of the Declaration. The Declaration is hereby terminated and released together with all covenants, restrictions and limitations of every nature originally declared, arising under, or accruing pursuant to the Declaration. This Termination and Release shall be effective upon recording of this Termination in the real property records of King County, Washington.

IN WITNESS WHEREOF the City has executed this Termination and Release effective on the date first written above.

[Signature/acknowledgement]

EXHIBIT A TO TERMINATION AND RELEASE OF DECLARATION OF COVENANTS
REGARDING TRANSFER

[Legal Description]

EXHIBIT L-2
[OPTION PROPERTY DECLARATION OF COVENANTS REGARDING TRANSFER]

AFTER RECORDING RETURN TO:

Inslee, Best, Doezie & Ryder, P.S.
Attn: Jackson T. Bennett
777 - 108th Avenue N.E., Ste. 1900
P.O. Box 90016
Bellevue, WA 98009-9016

DECLARATION OF COVENANTS REGARDING TRANSFER

Grantor:	MSPT XI LLC, a Washington limited liability company
Grantee:	City of Kenmore, a Washington municipal corporation
Short Legal Description:	[Complete legal description on Exhibit. A]
Assessor's Property Tax Parcel/Account Number(s):	
Reference Number(s) of Documents Assigned or Released:	N/A

DECLARATION OF COVENANTS REGARDING TRANSFER

THIS DECLARATION OF COVENANTS REGARDING TRANSFER (this “**Declaration**”) is hereby made, declared and granted as of the ____ day of _____, 20____, by the Declarant, MSPT XI LLC, a Washington limited liability company, with respect to the real property legally described on **Exhibit A** (the “**Real Property**”), as follows:

WHEREAS, Declarant is the owner in fee title of the Real Property; and

WHEREAS, Declarant has exercised an option right to purchase the Real Property and received fee title to and ownership of the Real Property by way of statutory warranty deed to Declarant from its immediate predecessor in ownership of the Real Property, the City of Kenmore, a Washington municipal corporation (“**City**”), pursuant to that certain Agreement for Purchase, Sale and Development of Real Property dated as of the ____ day of _____, 2014 (the “**Purchase Agreement**”), which Purchase Agreement expressly made the declaration and recording of the covenants stated herein as a condition to the transaction described therein; and

WHEREAS, Declarant has agreed to and hereby makes the covenants declared herein;

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which are acknowledged by Declarant, Declarant hereby makes, grants and declares the following covenants with respect to the Real Property:

1. Covenant Not To Re-Sell. Declarant shall not, and shall not have the lawful authority to, sell, transfer, or otherwise permit any change of ownership of the Real Property that would result in Main Street Property Group LLC or the principals of Main Street Property Group LLC not being in control and managing the Real Property or any successor business entity (any and all of the foregoing, a “**Change of Ownership**”) prior to an approved site plan for the Real Property and completion (meaning a Certificate of Occupancy, or Temporary Certificate of Occupancy has been obtained) of at least four thousand (4,000) square feet of new construction at the Real Property, and entry into a lease for the Real Property that incorporates the Required Terms, as defined below. A sale or transfer in which Declarant’s members or managers maintain a controlling aggregate interest in the Real Property does not constitute a Change of Ownership. The term “**Required Terms**” shall mean the following terms: a) the lease term shall be no less than five (5) years, and b) the tenant of such lease shall be obligated to operate a sit-down restaurant. As used in the previous sentence, the term “sit-down restaurant” does not include (i) a restaurant that operates any kind of drive-through, (ii) a “fast food” restaurant, or (iii) a bar that serves people solely over the age of twenty-one (21) without an affiliated sit-down restaurant.

2. Covenant Regarding New Construction. All site plan applications as submitted from time to time with respect to the Real Property shall contemplate not less than four thousand (4,000) square feet of new construction on the Real Property (the “**Real Property New Construction**”).

3. Maintenance of Real Property and Use by City. Under no circumstances shall the Declarant allow the Real Property to become a vacant, unkempt “weed lot”. Additionally, prior to commencement of the Real Property New Construction, the City shall have the right to maintain the Real Property and continue its preexisting use of the Real Property. Solely for purposes of this Section 3, the City agrees to defend, indemnify and hold harmless Declarant from any and all claims for injuries or damages suffered by any person or property caused by the City’s use or maintenance of the Real Property; *provided*, the City shall have no duty to the Declarant for any loss, injury or damages caused by or resulting from the active negligence or willful misconduct of Declarant or Declarant’s agents. Solely for purposes of this Section 3 and solely as to any claim by an employee of the City against Declarant for which the City has a duty to defend, indemnify and hold harmless Declarant, the City waives its immunity under Title 51, Revised Code of Washington (which waiver is solely for Declarant’s benefit and solely for purposes of this Section 3 and may not be invoked by any third person, including any such employee of the City or the heir, assign, successor, trustee, administrator or personal representative of such employee).

4. Sidewalk, Landscaping and Street-side Improvements. As a condition to any permit for construction of improvements on the Real Property, such improvements shall include sidewalks and landscaping along the property borders of the Real Property. The sidewalks and landscaping shall be of such nature consistent with those required under the City’s regulations in KMC Chapter 18. Such improvements shall be installed along or adjacent to any portion of the Real Property that borders or is adjacent to a public street. Absence of such improvements for prior development or elsewhere along such public street shall not excuse compliance with this requirement as to any development hereafter constructed on the Real Property. The requirements of this section shall be referred to as the **“Sidewalk, Landscaping and Street-Side Improvements Requirement.”**

5. Utility Lines. All electric power transmission and other utility lines and conduits associated with any construction or improvements on the Real Property or in right-of-way adjacent to the Real Property shall be placed underground so that no utility lines are located above ground. Any costs associated with such undergrounding shall be borne by Declarant. Such undergrounding work shall be performed at a time fully appropriate to coordinate with construction of other underground work on the Real Property. The requirements of this section shall be referred to as the **“Utility Undergrounding Requirement.”**

6. Termination and Release of Covenants. Upon completion of the Real Property New Construction, the Sidewalk, Landscaping and Street-Side Improvements Requirement, the Utility Undergrounding Requirement, and execution of a lease for the Real Property that incorporates the Required Terms, and issuance of all Certificates of Occupancy or Temporary Certificates of Occupancy or at such other time prior to issuance of all Certificates of Occupancy or Temporary Certificates of Occupancy as the City shall determine in its sole discretion, the City shall execute and cause to be recorded with the appropriate recording office in King County, Washington a termination and release of this Declaration in the form of **Exhibit B** hereto, the terms and conditions of which are incorporated into and made a part of the terms of this Declaration (the **“Termination and Release”**). The Termination and Release shall be effective upon the date the Termination and Release is recorded in King County, Washington and shall

have the effect of terminating this Declaration and releasing the Declarant, its successors and assigns, from further obligations under this Declaration. Declarant, by its signature below, hereby consents to the City unilaterally recording the Termination and Release as discussed in this Section 8 without further action by, providing further notice to, or obtaining further permission from Declarant.

7. Burden Running with the Land; Benefit In Gross. Declarant intends that the burdens of the covenants contained in this Declaration shall touch and concern and run with the Real Property such that they will be binding upon Declarant's heirs, successors, and assigns unless and until terminated as provided in Section 8. Declarant intends that the benefits of the covenants contained in this Declaration shall be in gross and shall inure to the benefit of and be enforceable by the City against it and all future heirs, successors and assigns.

8. No Third Party Rights. The provisions of this Declaration are intended for the benefit of, and may only be enforced by, the parties hereto and their respective successors and permitted assigns. None of the rights or obligations of the parties herein set forth (or implied) are 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, consultant, subcontractor, worker, supplier, mechanic, insurer, surety, guest, member of the public, or other third parties having dealing with either of the parties hereto or involved, in any manner, in the Property or the Project.

9. Force Majeure. As used in this Declaration, the term "**Force Majeure**" means "acts of God" or the public enemy; civil war; insurrection or riots; fires; explosions or serious accidents; strikes or labor disputes; inability to obtain necessary materials, accessories, equipment, or parts from the manufacturers thereof not caused or contributed to by the party claiming delay for such reason; abnormal weather or unforeseen, abnormal soils conditions which necessitate delays; or other abnormal and unforeseen event or condition not caused by or contributed to and beyond the reasonable control of the party claiming excused delay for such reason.

10. Captions and Headings. Captions and headings used in this Declaration are for convenience of reference only and are not part of the terms of this Agreement or to be used to construe, interpret, modify, qualify, vary or supplement any term, condition, covenant or provision of this Declaration.

11. Defined Terms. Initially-capitalized terms used by not defined herein shall have the meanings stated in the Purchase Agreement.

DATED the day and year first written above.

[Signature/Acknowledgment]

EXHIBIT A TO DECLARATION OF COVENANTS REGARDING TRANSFER

[Legal Description of the Real Property]

EXHIBIT B TO DECLARATION OF COVENANTS REGARDING TRANSFER

AFTER RECORDING RETURN TO:

Inslee, Best, Doezie & Ryder, P.S.
Attn: Jackson T. Bennett
777 - 108th Avenue N.E., Ste. 1900
P.O. Box 90016
Bellevue, WA 98009-9016

**TERMINATION AND RELEASE OF DECLARATION OF COVENANTS REGARDING
TRANSFER**

Grantor:	MSPT XI LLC, a Washington limited liability company
Grantee:	City of Kenmore, a Washington municipal corporation
Short Legal Description:	[Complete legal description on Exhibit. A]
Assessor's Property Tax Parcel/Account Number(s):	
Reference Number(s) of Documents Assigned or Released:	N/A

**TERMINATION AND RELEASE OF DECLARATION OF COVENANTS REGARDING
TRANSFER**

THIS TERMINATION AND RELEASE OF DECLARATION OF COVENANTS REGARDING TRANSFER (the “**Termination and Release**”) is executed by the City of Kenmore, a Washington municipal corporation, (the “**City**”) for the purpose of terminating the Declaration of Covenants described below.

RECITALS

A. MSPT XI LLC, a Washington limited liability company (“**Declarant**”), is the owner of the real property described in **Exhibit A** hereto and incorporated herein by this reference (the “**Property**”). The Property is burdened by that certain Declaration of Covenants dated _____ and recorded under King County Recording No. _____ (the “**Declaration**”).

B. Pursuant to the terms of the Declaration, the benefits of the covenants contained therein inure to and are enforceable by the City, and the City is required to terminate and release the Declaration upon issuance of all Certificates of Occupancy or Temporary Certificates of Occupancy required by the Declaration or at such other time as the City, in its sole discretion, determine.

C. Pursuant to Section 6 of the Declaration, the City desires to terminate the Declaration

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, the City agrees as follows:

1. Termination and Release of the Declaration. The Declaration is hereby terminated and released together with all covenants, restrictions and limitations of every nature originally declared, arising under, or accruing pursuant to the Declaration. This Termination and Release shall be effective upon recording of this Termination in the real property records of King County, Washington.

IN WITNESS WHEREOF the City has executed this Termination and Release effective on the date first written above.

[Signature/acknowledgement]

EXHIBIT A TO TERMINATION AND RELEASE OF DECLARATION OF COVENANTS
REGARDING TRANSFER

[Legal Description]

EXHIBIT M
[DECLARATION OF COVENANTS REGARDING PERMANENT COVENANTS]

AFTER RECORDING RETURN TO:

Inslee, Best, Doezie & Ryder, P.S.
Attn: Jackson T. Bennett
777 - 108th Avenue N.E., Ste. 1900
P.O. Box 90016
Bellevue, WA 98009-9016

DECLARATION OF COVENANTS REGARDING PERMANENT COVENANTS

Grantor:	MSPT XI LLC, a Washington limited liability company
Grantee:	City of Kenmore, a Washington municipal corporation
Short Legal Description:	[Complete legal description on Exhibit A]
Assessor's Property Tax Parcel/Account Number(s):	
Reference Number(s) of Documents Assigned or Released:	N/A

DECLARATION OF COVENANTS REGARDING PERMANENT COVENANTS

THIS DECLARATION OF COVENANTS REGARDING PERMANENT COVENANTS (this “**Declaration**”) is hereby made, declared and granted as of the ____ day of _____, 20____, by the Declarant, MSPT XI LLC, a Washington limited liability company, with respect to the real property legally described on **Exhibit A** hereto consists of the “**Parcel D**” and the “**Parcel B**” (the Parcel D and the Parcel B are collectively referred to herein as the “**Real Property**”), as follows:

WHEREAS, Declarant is the owner in fee title of the Real Property; and

WHEREAS, Declarant has received fee title to and ownership of the Real Property by way of statutory warranty deed to Declarant from its immediate predecessor in ownership of the Real Property, the City of Kenmore, a Washington municipal corporation (“**City**”), pursuant to that certain Agreement for Purchase, Sale and Development of Real Property dated as of the ____ day of _____, 2014 (the “**Purchase Agreement**”), which Purchase Agreement expressly made the declaration and recording of the covenants stated herein as a condition to the transaction described therein; and

WHEREAS, the City is the owner of the real property described in **Exhibit B** hereto that consists of the “**Town Green Parcel**” and the “**Pavilion Parcel**” as identified therein; and

WHEREAS, Declarant has agreed to and hereby makes the covenants declared herein;

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which are acknowledged by Declarant, Declarant hereby makes, grants and declares the following covenants with respect to the Real Property:

1. Restrictions on Types of Business. None of the following types of business, operation or activity, whether or not considered “retail,” shall be permitted on or within the Real Property at any time:

- a. any operation primarily used as a storage facility, mini-storage, vehicle or vessel storage, or other similar warehouse operation;
- b. dumping, disposing, incineration or reduction of garbage other than for trash or garbage containers or compactors used in conjunction with a building on the Real Property which otherwise complies with these covenants;
- c. automotive body shop or collision repair operation, automobile painting operation, automobile sound system or speaker installer, auto supply, auto parts, auto lubricating business, tire store or auto repair shop or facility;
- d. mortuary or funeral home;
- e. casino, card room or other business engaged primarily in gambling or

gaming, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall; notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the occupant of the Real Property;

f. “adult entertainment” stores or purveyors, including, but not limited to stores or purveyors selling, renting or otherwise offering pornographic videos, books, literature, “adult toys,” or similar products;

g. except where applicable law bars such prohibition, any business engaged in selling, purveying or otherwise providing medical or recreational marijuana, cannabis or similar substances or products or products employed primarily in the use or consumption thereof;

h. gun shops or sporting equipment businesses engaged primarily in the purchase, sale and/or exchange of firearms.

2. Provision of Handicapped Parking Stalls. Declarant shall provide, on behalf of the Town Green Parcel and the Pavilion Parcel, designated parking stalls for handicapped individuals sufficient to meet the requirements of the Americans with Disabilities Act of 1990, as amended and as may be amended from time to time, and the applicable code provisions of Chapter 18.40 of the Kenmore Municipal code as may be amended from time to time. Declarant shall ensure such parking stalls are maintained in a reasonable manner and shall be responsible for one hundred percent (100%) of the costs of maintenance for such parking stalls. The benefits of this Section 2 shall be appurtenant to the Town Green Parcel and the Pavilion Parcel respectively.

3. Consolidated Solid Waste Pick-Up and Delivery Locations. Declarant shall provide for and allow for access to a designated location to deposit the solid waste of the owners, tenants and permittees of the Town Green Parcel and the Pavilion Parcel (the “Garbage Area”). Additionally, the Declarant shall allow access to the Garbage Area for purposes of allowing trucks to remove such solid waste. The location of the Garbage Area shall be determined in consultation with the owner of the Town Green Parcel and the Pavilion Parcel. The Declarant shall ensure that the Garbage Area is maintained in a reasonable manner and shall be responsible for one hundred percent (100%) of the costs of maintenance for the Garbage Area, *provided* that the respective owner of the Real Estate, the Town Green Parcel, and the Pavilion Parcel shall be responsible for any and all utility charges associated with the removal of such owner’s solid waste and/or the provision of receptacles for containing such owner’s solid waste within the Garbage Area. The benefits of this Section 3 shall be appurtenant to the Town Green Parcel and the Pavilion Parcel respectively.

4. Burden Running with the Land; Benefit In Gross. Declarant intends that the burdens of the covenants contained in this Declaration shall touch and concern and run with the Real Property such that they will be binding upon Declarant’s heirs, successors, and assigns unless and until terminated as provided in Section 5. Declarant intends that the benefits of the covenants contained in this Declaration shall be in gross and shall inure to the benefit of and be

enforceable by the City against it and all future heirs, successors and assigns; *provided* the benefits conferred in Sections 2 and 3 shall be appurtenant to the Town Green Parcel and the Pavilion Parcel, and shall run with the Town Green Parcel and Pavilion Parcel unless and until terminated as provided in Section 5.

5. Termination. The provisions of this Declaration and the burdens and benefits hereof may be terminated by a written agreement executed by the Declarant and the City that is recorded in the real property records of King County, Washington. Such termination shall be effective as of the date the same is recorded in the real property records of King County, Washington.

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

7. Captions and Headings. Captions and headings used in this Declaration are for convenience of reference only and are not part of the terms of this Agreement or to be used to construe, interpret, modify, qualify, vary or supplement any term, condition, covenant or provision of this Declaration.

8. Defined Terms. Initially-capitalized terms used by not defined herein shall have the meanings stated in the Purchase Agreement.

DATED the day and year first written above.

[Signature/Acknowledgment]

EXHIBIT A TO DECLARATION OF COVENANTS REGARDING PERMANENT
COVENANTS

[Legal Descriptions]

EXHIBIT B TO DECLARATION OF COVENANTS REGARDING PERMANENT
COVENANTS

[Legal Descriptions]

EXHIBIT N
DEVELOPMENT AGREEMENT POTENTIAL DEAL POINTS

1. Expedited Permit Review Process including mutually agreed upon City review schedule
2. Phased permitting and occupancy
3. Design Standard Flexibility
4. Building Height Flexibility
5. Setback Flexibility
6. Allowable Uses
7. Density requirements
8. Landscaping design requirements
9. Parking requirements and parking construction
10. Property Tax Abatement for Residential in exchange for Affordable Housing at Developer's sole option.
11. Town Green operations
12. Site access improvements
13. Signage code flexibility
14. Existing use vehicle trips for traffic impact fee credit.
15. Classification of proposed uses for traffic impact fees.
16. Flexibility on parking requirements,
17. Bike storage and bike parking flexibility

The foregoing is not intended as a complete list of all terms and conditions of any Development Agreement, or a representation, warranty, covenant or other assurance that a Development Agreement will be entered into, but is intended as a list of certain specific terms on which Seller and Buyer have agreed to discuss and may be included in a Development Agreement if agreement on all other necessary terms is reached.

EXHIBIT O **ENVIRONMENTAL REPORTS**

- 1) Memorandum dated August 20, 2013 from Carla E. Brock, LG and Steve Germiot, LHG of Aspect Consulting to The Benaroya Company regarding Kenmore Village Properties Environmental Conditions Summary.
- 2) Subsurface Exploration, Geologic Hazard, and Preliminary Geotechnical Engineering Report dated October 10, 2007 prepared by Associated Earth Sciences, Inc. for King County Library System regarding the Kenmore Library.
- 3) Letter dated September 25, 2012 from the Washington State Department of Ecology to Bill Carroll of Pacific Crest Environmental regarding Opinion on Proposed Cleanup of the Boyd's Dry Cleaners Site.
- 4) Phase I Environmental Site Assessment dated March 10, 1995 prepared by Environmental Partners, Inc. for Mr. Roland Jankelson of Jankelson Commercial Property Investments regarding Kenmore Village.
- 5) Phase I Environmental Site Assessment dated May 14, 2013 prepared by GeoEngineers, Inc. for the City of Kenmore regarding File No. 7457-233-00.
- 6) Soil, Groundwater, and Vapor Sampling and Test Report dated August 27, 2013 prepared by GeoEngineers, Inc. for the City of Kenmore regarding File No. 7457-233-00.
- 7) Phase I and II Environmental Site Assessment dated October 3, 2007 prepared by GeoEngineers, Inc. for Urban Partners LLC regarding File No. 16831-001-02.
- 8) Geotechnical Engineering Services dated August 31, 2007 prepared by GeoEngineers, Inc. for Urban Partners LLC regarding File No. 16831-001-01.
- 9) Phase I Environmental Site Assessment dated December 27, 2004 prepared by GeoEngineers, Inc. for the City of Kenmore regarding File No. 7457-122-00.
- 10) Focused Phase II Environmental Site Assessment Kenmore Village Shopping Center, Kenmore, Washington dated September 12, 2003 prepared by GeoEngineers, Inc. for the City of Kenmore.
- 11) Letter dated January 9, 2014 from Pacific Crest Environmental, LLC to Christopher Mauer, Toxic Cleanup Program, Washington State Department of Ecology.
- 12) Cleanup Action Annual Report dated December 28, 2013 prepared by Pacific Crest Environmental, LLC for Mr. Wesley Boyd, Skellenger Bender PS.
- 13) Scope of Work dated March 27, 2013 prepared by Pacific Crest Environmental, LLC.
- 14) Remedial Investigation/Feasibility Study dated February 16, 2012 prepared by Pacific Crest Environmental, LLC for Wesley and Myrtle Boyd regarding Boyd's Dry Cleaners 6524 Northeast 181st Street, Kenmore, Washington VCP NO. NW0786.
- 15) Soils Exploration and Engineering Report dated May 23, 1980 prepared by Rittenhouse-Zeman & Associates, Inc. for Robert A. Chervenak F.A.I.A. & Associates regarding Group Health Clinic, Kenmore Site.
- 16) Limited Phase II Environmental Assessment, Limited Soil and Ground Water Study, The Kenmore Shopping Center Project Property dated July 9, 2013 prepared by Saltbush Environmental Service, Inc. for Jankelson Real Estate Property Investments.
- 17) Environmental Conditions Summary – Updated dated January 15, 2014 prepared by GeoEngineers, Inc. for the City of Kenmore.
- 18) Environmental Review – Boyd's Dry Cleaners 2013 Draft Cleanup Action Report dated March 18, 2014 prepared by GeoEngineers, Inc. for the City of Kenmore.

- 19) Additional Environmental Site Characterization Kenmore Village dated February 28, 2014 prepared by Associated Earth Sciences, Inc. for MainStreet Property Group, LLC.
- 20) Vapor Intrusion Evaluation – Post Office Parcel Portion of Kenmore Village Property dated April 15, 2014 prepared by GeoEngineers, Inc. for the City of Kenmore.
- 21) Letter dated April 16, 2014 from the City of Kenmore to Eugene Williams, Postmaster, United States Postal Service.
- 22) [Additional reports prepared during Main Street's due diligence to be added.]

EXHIBIT P
[MEMORANDUM OF OPTION AGREEMENT]

AFTER RECORDING RETURN TO:

Inslee, Best, Doezie & Ryder, P.S.
Attn: Jackson T. Bennett
777 - 108th Avenue N.E., Ste. 1900
P.O. Box 90016
Bellevue, WA 98009-9016

MEMORANDUM OF OPTION AGREEMENT

Grantor: City of Kenmore, a Washington municipal corporation

Grantee: MSPT XI LLC, a Washington limited liability company

Short Legal Description: [Complete legal description on Exhibit. A]

Assessor's Property Tax
Parcel/Account Number(s):

Reference Number(s) of
Documents Assigned
or Released: N/A

MEMORANDUM OF OPTION AGREEMENT

THIS MEMORANDUM OF OPTION AND DEVELOPMENT AGREEMENT (this “Memorandum”) is executed this ____ day of _____, 2014, by and between the City of Kenmore, a Washington municipal corporation (“Optionor”) and MSPT XI LLC, a Washington limited liability company (“Optionee”). Optionor and Optionee are at times collectively referred to herein as the “Parties”.

NOTICE IS HEREBY GIVEN AS FOLLOWS:

1. Option Agreement. The Parties have entered into that certain Agreement for Purchase, Sale and Development of Real Property (the “Purchase Agreement”) whereby Optionor has granted Optionee an exclusive option to purchase, on and subject to the terms, conditions and limitations stated therein, certain real property described therein as the “Option Property” which comprises the real property described therein, which is legally described in **Exhibit A** attached hereto.

2. Term of the Option. Optionee’s exclusive option to purchase the Option Property extends to _____ (the “Option Term”). Any person, party or entity taking, obtaining, receiving or acquiring any interest in the Option Property during the Option Term shall take, obtain, receive or acquire the same subject to the rights and interests therein of Optionee under the Purchase Agreement.

3. Interpretation. The Parties have executed this Memorandum in order that all persons and entities not parties to the Purchase Agreement may have notice of its existence and of certain of its provisions. However, this Memorandum is not a complete summary of the Purchase Agreement the full terms and conditions of which are set forth in the written Purchase Agreement executed by and between the Parties. This Memorandum is not intended to amend, modify, or otherwise change the terms and conditions of the Purchase Agreement between the Parties. Provisions in this Memorandum shall not be used in interpreting the provisions of the Purchase Agreement. In the event of a conflict between this Memorandum and the Purchase Agreement, the Purchase Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date and year first above written.

[Signatures/Acknowledgment]

EXHIBIT A TO THE MEMORANDUM OF OPTION AGREEMENT
LEGAL DESCRIPTION

[Legal Description]

EXHIBIT Q
[AS-OF-CLOSING SURVEY]
(to be attached prior to Closing)

City of Kenmore Contract No. 15-C1449

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF KENMORE
AND MSPT XI LLC, FOR THE
SPENCER SQUARE DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 3rd day of August, 2015, by and between the CITY OF KENMORE, a Washington municipal corporation, hereinafter the "City," and MSPT XI LLC, a limited liability company organized under the laws of the State of Washington, hereinafter the "Developer."

RECITALS

WHEREAS, RCW 36.70B.170 authorizes the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction;

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement;

WHEREAS, this Agreement relates to the mixed-use residential, commercial and retail development referred to in this Agreement for identification purposes as Spencer Square (the "Project") to be constructed by Developer on the Property described in Section 2 of this Agreement;

WHEREAS, the Project is further described in Site Plan Application No. CSP2014-107 filed by the Developer with the City (the "Application");

WHEREAS, the Developer and the City envision the Project as being an integral part of the overall "Kenmore Village" development of real property formerly owned by the City, with the Project forming a part of the commercial and residential component of Kenmore Village;

WHEREAS, the City and the Developer are providing mutual benefits as described herein; and

WHEREAS, the following events have occurred as of the date of this Agreement with respect to the processing of the Application:

(a) The City Manager issued a final decision dated July 16, 2014 approving the Site Plan (Project No. PRJ2014-107) and, if the City Council passes the ordinance approving this Agreement, on the date such ordinance passes: (i) the City Manager's final decision on the Site Plan shall become effective, and (ii) the period for appeal of such decision shall commence;

City of Kenmore Contract No. 15-C1449

(b) The SEPA decision was issued on July 27, 2015; and

(c) After two public hearings, by Ordinance No. 15-0401, the City Council authorized the City Manager to sign this Agreement with the Developer;

NOW, THEREFORE, the City and the Developer hereby agree as follows:

GENERAL PROVISIONS

Section 1. The Project. The “**Project**” means the development and use of the Property contemplated in this Agreement and as shown on the Approved Site Plan and Phasing Plan, attached as Exhibit B (the “Approved Site Plan and Phasing Plan,” the “Approved Site Plan,” or the “Phasing Plan”). The Project may include residential, commercial and retail (including restaurant) uses.

Section 2. The Property. The “**Property**” means approximately two (2.0) acres of real property located near the northwest corner of the intersection of NE 181st Street and 68th Avenue NE and legally described on Exhibit A hereto. The Property is zoned Downtown Commercial (DC). In the event that Developer purchases the Phase D Property from the City, the Property shall be deemed to include the Phase D Property for all purposes of this Agreement from and after the date that Developer takes title to the Phase D Property.

Section 3. Definitions. In addition to such other terms as are defined throughout this Agreement, as used in this Agreement, the following terms, phrases and words shall have the following meanings:

3.1 “Adopting Ordinance” means the ordinance which approves this Agreement as required by RCW 36.70B.200.

3.2 “Certificate of Occupancy” means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued. Temporary or phased occupancy of the Project may be authorized before the completion of the entire work covered by the Project pursuant to KMC 15.30.510. “Certificate of Occupancy” as used herein does not include a temporary or phased certificate of occupancy.

3.3 “Certificate of Satisfaction” has the meaning stated in Section 8.4 of this Agreement.

3.4 “City” means the City of Kenmore.

3.5 “City Council” means the City Council of the City.

City of Kenmore Contract No. 15-C1449

3.6 "City Manager" means the City Manager of the City or, to the extent within the City Manager's authority, his or her designee.

3.7 "Development Requirements" has the meaning stated in Section 8.1 hereof.

3.8 "Development Standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3) and, except as specifically deviated from as shown on the Approved Site Plan and Phasing Plan, Exhibit B hereto or as otherwise provided by this Agreement, all applicable standards in KMC Titles 12 through 21, the terms and conditions of which, as in effect on the Effective Date, are hereby incorporated into and made a part of the terms and conditions of this Agreement.

3.9 "Effective Date" means the effective date of the Adopting Ordinance.

3.10 "Existing Land Use Regulations" means the ordinances adopted by the City Council in effect on the Effective Date, the terms and conditions of which are hereby incorporated into and made a part of this Agreement, and which include the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Property, including, but not limited to: the Comprehensive Plan; the City's Official Zoning Map; applicable standards in KMC Titles 12 through 21 including development standards, street standards, surface water and utility requirements; SEPA; and all ordinances, KMCs, rules and regulations of the City establishing subdivision and other development standards. Existing Land Use Regulation does not include taxes or permit review fees or any fees or other amounts required by or payable to any governmental entity other than the City.

3.11 "Force Majeure" means "acts of God" or the public enemy; civil war; insurrection or riots; fires; explosions or serious accidents; strikes or labor disputes; inability to obtain necessary materials, accessories, equipment, or parts from the manufacturers thereof not caused or contributed to by the party claiming delay for such reason; abnormal weather or unforeseen, abnormal soils conditions which necessitate delays; or other abnormal and unforeseen event or condition not caused by or contributed to and beyond the reasonable control of the party claiming excused delay for such reason.

3.12 "Impact Fee" has the meaning stated in KMC 20.47.020(O), hereby incorporated into and made a part of this Agreement.

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3.13 "Kenmore Village" means the integrated development of real property formerly owned by the City, comprised of commercial, retail and residential components, and located at the northwest corner of the intersection of NE 181st Street and 68th Avenue NE.

3.14 "Spencer Square" means the mixed-use residential, retail and commercial development proposed to occur on the Property, and that will constitute the commercial and retail component and a portion of the residential component of Kenmore Village.

3.15 "Spencer 68" means the residential development on the property adjoining the Property to the north of the Property, which does or will constitute a residential component of Kenmore Village.

3.16 "KMC" means the Kenmore Municipal Code.

3.17 "Phase" means any of Phase A, Phase B, Phase C, Phase D, or an additional Phase, as defined in Section 8.4 of this Agreement.

3.18 "Phase A" means the improvements to be constructed on the Phase A Property.

3.19 "Phase A Property" means certain real property legally described as Parcel E of Kenmore Binding Site Plan, BSP2015-002, recorded February 6, 2015, under Recording No. 20150206000972, in Volume 268 of Plats, pages 54 and 55, records of King County, Washington.

3.20 "Phase B" means the structured parking to be constructed on certain real property legally described as Parcel D of Kenmore Binding Site Plan, BSP2015-002, recorded February 6, 2015, under Recording No. 20150206000972, in Volume 268 of Plats, pages 54 and 55, records of King County, Washington.

3.21 "Phase C" means the improvements, other than structured parking, to be constructed on certain real property legally described as Parcel D of Kenmore Binding Site Plan, BSP2015-002, recorded February 6, 2015, under Recording No. 20150206000972, in Volume 268 of Plats, pages 54 and 55, records of King County, Washington.

3.22 "Phase D" means the sit-down restaurant to be constructed on the Phase D Property. For the purposes of this Agreement, "sit-down restaurant" does not include (i) a restaurant that operates any kind of drive-through, (ii) a "fast food" restaurant, or (iii) a bar that serves people solely over the age of twenty-one (21) without an affiliated sit-down restaurant.

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3.23 "Phase D Property" means that certain real property legally described as Parcel C of Kenmore Binding Site Plan, BSP2015-002, recorded February 6, 2015, under Recording No. 20150206000972, in Volume 268 of Plats, pages 54 and 55, records of King County, Washington. The Phase D Property is, as of the Effective Date, owned by the City of Kenmore.

3.24 "Post Office Parcel" means that certain real property legally described as vacated lots 8 and 9 in Block 12 of Northlake Terrace, according to plat recorded in Volume 33 of Plats at page 20, in King County, Washington; together with the south half of vacated Northeast 182nd Street adjacent thereto; and together with all of that portion of vacated 67th Avenue NE that lies west of a line drawn 390 feet west of the east line of Block 13 of said addition and south of the center line of Northeast 182nd Street extended east. The Post Office Parcel is, as of the Effective Date, owned by the City of Kenmore.

3.25 "Post-Termination Obligations" means the respective obligations of either or both of the parties hereto expressly stated in Section 14 hereof.

3.26 "Project" shall have the meaning given to it by Section 1 above.

3.27 "Property" shall have the meaning given to it by Section 2 above.

3.28 "SEPA" means the Washington State Environmental Policy Act of 1971, RCW Ch. 43.21C.

3.29 "Temporary or Phased Certificate of Occupancy" means a certificate of occupancy authorizing occupancy of a portion of the Project issued pursuant to KMC 15.30.510.

3.30 "Town Green" means that certain real property located at the corner of NE 181st Street and 68th Avenue NE owned by the City, which is intended for development as a public space, and which is legally described as Parcels F and G of Kenmore Binding Site Plan, BSP2015-002, recorded February 6, 2015, under Recording No. 20150206000972, in Volume 268 of Plats, pages 54 and 55, records of King County, Washington.

Section 4. Exhibits. The following exhibits to this Agreement (the "Exhibits") are attached hereto and by this reference incorporated into and made a part of this Agreement:

Exhibit A – Legal description of the Property

Exhibit B – Approved Site Plan and Phasing Plan

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Exhibit C – Certificate of Satisfaction Form

Exhibit D – Notice of Termination

Exhibit E – Project Renderings

Exhibit F – Spencer Square Signs

Exhibit G – NE 181st St and 67th Ave NE Improvements

Exhibit H – Expedited Building Permit Review and Submittal Time Periods

Section 5. Project is a Private Undertaking. It is agreed between the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

Section 6. Term of Agreement. This Agreement shall commence on the Effective Date and, subject to Section 15.1 hereof, shall continue in force for a period of ten (10) years from the Effective Date unless sooner terminated or extended for a period of up to five (5) years as provided herein. Any extension must be requested by Developer at least 90 days prior to the expiration of the term of this Agreement. Because this Agreement is associated with land use decisions, the City Manager may grant such an extension of up to five (5) years if, at the end of the ten (10)-year period referred to above, those actions described in this Agreement to be completed by Developer during those first ten (10) years have been completed. All other requests for extensions shall be reviewed by the City Council. Following the termination hereof, this Agreement shall have no force and effect, subject to the Post-Termination Obligations of the parties. The Approved Site Plan and Phasing Plan shall be valid for the term of this Agreement. Any modification to the terms of KMC 18.110.060(C)(3) after the Effective Date shall not alter the terms of this Section.

Section 7. Vested Rights of Developer. Except as otherwise expressly stated in this Agreement, during the term of this Agreement, in developing the Property consistent with Development Standards and Existing Land Use Regulations specified in this Agreement, the development rights, obligations, terms and conditions expressly stated in this Agreement are fully vested in the Developer and may not be changed or modified by the City, except (1) by mutual consent of all the parties hereto and in accordance with the process established by law for the adoption of a development agreement; or (2) to the extent required by a serious threat to public health and safety. For avoidance of doubt, the City hereby reserves, and shall at all times have, authority to impose new or different regulations, conditions or requirements for development of the Property (including regulations, conditions or requirements that may be inconsistent with the Development Standards and Existing Land Use Regulations specified in this Agreement) to the extent required by a serious threat to public health and safety. Building permits and other permits subject to KMC Titles 15 (Buildings and Construction) and 20 (Development Permits) (excluding 20.47 and 20.50, which are covered by this Agreement) shall be considered under the provisions of KMC Titles 15 and 20 (excluding 20.47 and 20.50) in effect at the time of submittal of a valid and fully complete application, which requirements shall apply in place of, and not be subject to, Section 7

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(Vesting) of this Agreement. Notwithstanding the foregoing, no changes to either of the International Building Code or International Fire Code or state adoption thereof, taking effect after the date of this Agreement, shall require redesign or modification of any Project utilities, facilities or other infrastructure permitted, approved (including any of the foregoing approved in the Approved Site Plan and Phasing Plan) or installed previous to or in accordance with this Agreement unless, and except to the extent redesign or modification is required to avoid a serious threat to the public health or safety.

Section 8. Development Standards.

8.1 Permitted Uses and Code Deviations. The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines and standards for development of the Property shall be, to the extent expressly stated herein or therein, those set forth in this Agreement, the permits and approvals identified herein, and all exhibits incorporated herein (collectively, the “**Development Requirements**”), including, but not limited to, Exhibit B – Approved Site Plan and Phasing Plan, and the Development Standards and Existing Land Use Regulations. The Development Requirements set forth in this Agreement are hereby adopted and, to the fullest extent allowed by applicable law and, subject to the qualifications and provisions stated in Sections 7 and 8.3 hereof, shall govern and control all development in the Project. For purposes of construction and interpretation, the City and Developer acknowledge and agree that the Development Requirements are intended to be compatible with the Kenmore Downtown Plan, dated April 2003, which provides the City’s vision for the Downtown area in which this development is located.

(a) **Downtown Design Standards.** The Project may deviate from the Downtown Design Standards, KMC Ch. 18.52, as necessary to provide an aesthetically pleasing project and accommodate site conditions in the manner identified or otherwise reflected in the Approved Site Plan and Phasing Plan; provided, however, that the Project shall meet the intent and purpose of the standards, provide equal or higher quality materials than those required by KMC Ch. 18.52, and be compatible with the City’s overall vision and goals for the Downtown area. City and Developer acknowledge and agree that the Project, as reflected in the Approved Site Plan and Phasing Plan, meets the foregoing requirements. Such deviations may include, but are not limited to: (i) building materials; (ii) building setbacks, modulation, and articulation; (iii) weather protection for pedestrians; (iv) building mass and bulk; and (v) building height.

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(b) **Building Entrances.** Due to the topography of the Phase A Property, Developer cannot practicably provide a primary building entrance on 68th Avenue NE as part of the improvements during Phase A; however, Developer shall provide a secondary entrance on 68th Avenue NE, with architectural treatment and details similar in nature to the requirements applicable to the primary entrance.

(c) **Landscaping.** Developer must submit a landscaping plan to the City Manager for approval by the City Manager. If Developer disagrees with the landscaping plan approved by the City Manager, Developer may appeal such approval to the City Council. If that Developer provides an amount of landscaping that, in the aggregate, equals or exceeds the total amount of landscaping required by KMC 18.35.045, the Project shall not be subject to KMC 18.35.040, KMC 18.35.070, or the locational requirements of KMC 18.35.045.

(d) **Signage.** The Project may incorporate signs identifying tenants of the Project and/or the name of the Project or components thereof, including but not limited to the signage depicted on Exhibit F. Such signs shall be constructed of high-quality materials and shall be consistent in appearance with the signage depicted on Exhibit F and with the signage provided for other Class A commercial developments in the City. The Project shall not be subject to KMC 18.42.100(A).

8.2 Parking. The City and Developer acknowledge and agree that Developer has provided, in connection with the Project, certain parking rights that benefit the City and the public. Such parking rights are further described in the Amended and Restated Reciprocal Grant of Easements and Agreement for Joint Maintenance of Real Property, recorded in the real property records of King County, Washington, as recording number 20141114000894. Except for as provided in Sections 8.4 (c) and 8.4 (f), the City agrees to eliminate the minimum number of parking spaces required by KMC 18.40.030 for all Phases of the Spencer Square project.

8.3 Land Use Fees, Impact Fees, and Offsets.

(a) **Development Agreement Application Fee.** In consideration of the covenants and agreements of Developer in this Agreement, the Development Agreement application fee is waived.

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(b) **Land Use Permit Review Fees.** Notwithstanding the terms of Section 7 hereof, land use permit review fees adopted by the City by ordinance or resolution as of the Effective Date are not waived and may be increased by the City from time to time and are applicable to permits and approvals for the Property as long as such fees apply to similar applications and projects in the City.

(c) **Road Impact Fees.** Road Impact Fees shall be collected and paid at issuance of a building permit for each building in the Project. For the residential units in the Project, Road Impact Fees shall be assessed and charged at a rate not greater than the maximum of the Road Impact Fee rate for multi-family residential developments in effect as of the Effective Date, which is \$5,462.31 per unit. For commercial (including retail, office and restaurant) portions of the Project, Road Impact Fees shall be assessed and charged at a rate for shopping center developments in effect as of the date a complete application for a building permit or occupancy permit is submitted to the City for each Phase of the Project that includes a commercial component. All Road Impact Fees shall be subject to the following credit, as to which City and Developer hereby agree the requirements of KMC 20.47.050 have been satisfied:

- (i) Credit in the amount of \$7,667.29 per trip for the 125 existing PM peak trips as calculated by Developer's Transportation Engineer with the concurrence of the City's Transportation Engineer.

Such credits shall be applied to the first Phase of the Project.

(d) **Park Impact Fees.** Park Impact Fees shall be collected and paid at issuance of a building permit for each building in the Project. For the residential units in the Project, Park Impact Fees shall be assessed and charged at a rate not greater than the maximum of the Park Impact Fee rate for multi-family residential developments in effect as of the Effective Date, which is \$1,658.82 per unit. The commercial and retail portions of the Project shall not be subject to any Park Impact Fee.

(e) **School Impact Fees.** School Impact Fees collected by the City for the benefit of Northshore School District No. 407 (the "School District") shall be assessed collected, and paid on a per-unit basis in accordance with KMC Chapter 20.50. For the residential units in the Project, School Impact Fees shall be charged at no greater than the maximum of the rate in effect as of the Effective Date for multi-family residential units within the boundaries of Northshore School District No. 407, subject to such

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exemptions as may apply to the Project. The commercial and retail portions of the Project shall not be subject to any School Impact Fee.

8.4 Phasing of Project Development and Permitting.

(a) **Completion in Phases.** Subject to the terms and conditions of this Agreement, and in consideration of various factors which may impact the ability to develop the Project in the most efficient and economically feasible manner, the Project may be developed in phases, as shown on Exhibit B (Approved Site Plan and Phasing Plan) with Temporary Certificate of Occupancy available at the completion of each Phase (subject to all other requirements then in effect for issuance of a certificate of occupancy under the KMC and other governing requirements, further subject to the vesting provisions of this Agreement). Developer may, at Developer's discretion, develop each Phase separately or may develop multiple Phases simultaneously. Developer may develop Phases in such order as Developer deems prudent and desirable in Developer's discretion. All Phases shall be similar in design, materials and appearance. Upon issuance of a certificate of occupancy for any Phase of the Project, the City shall issue and Developer shall record a Certificate of Satisfaction, in a form substantially similar to that notice attached as Exhibit C for that Phase.

(b) **Identification of Phases.** For the avoidance of doubt, the letters used to identify each Phase (A, B, C, D, and so on) are for identification purposes only. The sequential nature of such identifiers shall not be interpreted to require that any Phase must be developed before or after any other Phase.

(c) **Site Plan Approval for Phase D.** The City and Developer acknowledge that Developer does not presently own the Phase D Property and that the Approved Site Plan and Phasing Plan attached as Exhibit B does not include details for development of the improvements that may be included as Phase D of the Project (the "Phase D Elements"). Developer acknowledges, as a condition to permits to be issued for construction or installation of buildings and improvements in Phase D of the Project, that the proposed Phase D Elements will be subject to design review and will be subject to the Development Agreement amendment processes as described in KMC Chapter 18.110.060 (E), if deviations from the KMC are proposed for Phase D Elements, including deviations from minimum parking space requirements. As a condition to any approval for Phase D, Phase D must be proposed for development as a commercial space intended to be

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operated as a sit-down restaurant, as defined in Section 3.22 hereof, and when completed shall be compatible with the buildings and improvements constructed during the other Phases of the Project. The City hereby agrees that the criteria used for such review shall be consistent with the criteria used for review of the Site Plan for the Phases described on Exhibit B hereto, subject only to any changes as may be necessitated for purposes of public health and safety, and the provisions of this Agreement pertaining to traffic capacity, parking ratios, stormwater discharge (Section 11.2 hereof), impact fees (Section 8.2), permitting standards (Section 8.4), minor modifications (Section 9), and discretionary decisions (Section 10) shall be deemed vested and applicable to Phase D.

- (i) **Use of Town Green.** In the future the City and Developer may agree, pursuant to the terms of a separate agreement or program to be negotiated and agreed to by City and Developer, to allow outdoor restaurant seating on a portion of the Town Green. If such agreement is reached, then the City agrees to waive the permit fees and permit application requirements associated with such outdoor restaurant seating and related uses, except that Developer shall not be exempt from the requirement to provide to the City an insurance certificate showing that the City has been named as an additional insured.

(d) **Subdivision or Boundary Line Adjustment Applications.** The City shall be the permitting agency to review all subdivision or boundary line adjustment applications, as applicable, which will be subject to requirements in effect at the time of any such applications (and are not subject to Section 7 of this Agreement). However, in the event of a subdivision or boundary line adjustment affecting the Property, the terms and conditions of this Development Agreement shall continue to apply to all properties of which any portion of the Property is a part.

(e) **Declaration of Covenants.** The Project phasing shall be consistent with Developer's obligation under the Declaration of Covenants Regarding Transfer recorded in the real property records of King County, Washington, on March 10, 2015, under recording number 20150310001417, to commence construction of Phase A of the Project not later than March 9, 2018, unless commencement of construction is delayed by reason of Force Majeure or such development timelines are extended by the City.

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(f) **Site Plan Approval for Phase A.** The City and Developer acknowledge that the Approved Site Plan and Phasing Plan attached as Exhibit B does not include details for development of the improvements that may be included as Phase A of the Project (the "Phase A Elements"). Developer acknowledges, as a condition to permits to be issued for construction or installation of buildings and improvements in Phase A of the Project, that the proposed Phase A Elements will be subject to design review and will be subject to the Development Agreement amendment processes as described in KMC Chapter 18.110.060 (E), if deviations from the KMC are proposed for Phase A Elements, including deviations from minimum parking space requirements.

8.5 Permitting Standards. Applications for permits and/or approvals made pursuant to this Agreement shall be made on such terms and under such conditions as are consistent with Development Requirements. Developer acknowledges, pursuant to KMC Section 18.110.020.C, any material deviation from applicable permitting requirements (except to the extent already provided for in this Agreement) must be matched with a provision of a benefit to the City or to the public of equal or greater value relative to the deviation requested, as determined by the City Manager. The deviations requested are offset by the public benefits described in this Agreement and as follows:

(a) Developer shall sponsor community events in the Town Green;

(b) Developer shall provide enhanced façade treatments and wayfinding signage along 68th Avenue NE;

(c) Developer shall provide on-street parking, bike lane striping and new centerline, striping and other markings along both sides of 68th Avenue NE between NE 181st St and NE 182nd St if Developer's traffic engineer and the City's transportation engineer determine pursuant to a traffic study that the existing right of way has sufficient width to accommodate on-street parking. Developer shall bear the cost of the traffic study, of design, striping and removal of striping, and any other costs associated with providing on-street parking, bicycle lane(s), and markings;

(d) Developer shall reconstruct the Kenmore Village entrance at the north portion of the NE 181st St and 67th Ave NE intersection to the City's specifications, as depicted in Exhibit G, by December 31, 2016. Such improvements shall not include irrigation, landscaping, lighting, utilities or utility vaults. However, Developer shall provide a minimum of two (2) four-inch conduits to extend to the adjacent landscaping area;

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(e) Should Developer acquire Phase D, Developer shall complete as part of Phase D the construction of the western 14' portion of the Town Green to the City's specifications, which shall be developed by the City in the City's reasonable discretion and in cooperation with Developer, should Developer exercise its purchase option;

(f) Developer agrees to locate all electric power transmission and other utility lines along 68th Ave NE underground between the north property line to the south property line;

(g) Developer agrees to locate all electric power transmission and other utility lines running east to west between the Project and the Spencer 68 Project in the area between 68th Avenue NE and the "Speedy Reedy" parcel;

(h) Developer agrees to provide the accessible parking stalls for the Town Green as outlined in the Agreement for Purchase, Sale and Development of Real Property, City of Kenmore Contract Number 14-C1254; and

(i) Developer agrees to provide for and allow access for consolidated solid waste pick-up and deliveries as outlined in the Agreement for Purchase, Sale and Development of Real Property, City of Kenmore Contract Number 14-C1254.

Section 9 Minor Modifications. Minor modifications from the approved permits or the Exhibits may be approved in accordance with the procedures of the KMC as in effect at the time of request for any such minor modification and shall not require an amendment to Approved Site Plan and Phasing Plan or this Agreement. For the purposes of this Agreement, "minor modifications" means any change which does not deviate materially from the scope or intention of the Approved Site Plan and Phasing Plan, such as changes to paint color, substitution of landscaping materials with comparable materials, and "field changes" necessitated by site inspections; and further includes any of the following: (a) rearrangement of existing lot lines or creation of lots (e.g., through short plat or boundary line adjustment) consistent with the Approved Site Plan, as the same may be amended or otherwise modified in accordance with KMC Ch. 18.105; or (b) changes involving the location or dimensions of buildings or landscaping, provided no such rearrangement or changes: (i) decrease the amount of perimeter landscaping, (ii) decrease parking ratios; or (iii) change the locations of any points of ingress and egress to the Property. For avoidance of doubt, and without limitation, modifications that will cause any of the following results are not considered minor: (a) an increase in traffic circulation problems (i.e., reduction in Level of Service for applicable roads or intersections); or (b) a reduction in the amount of total approved landscaping, off-street parking, loading zones, right-of-way or pavement width. Any modification to a permit or Exhibit

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that is not a minor modification shall require express consent of the City Manager and Developer, and any modification to an Exhibit that is deemed a modification to this Agreement shall require approval in the same manner as approval of any amendment to this Agreement (presently KMC 18.110.060 and any amendment or successor to that Section).

Section 10. Further Discretionary Actions (Including SEPA Review).

Developer acknowledges the Development Requirements contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, SEPA review of additional permit applications. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying Existing Land Use Regulations. The parties agree that SEPA applies to permits that will be issued during the term of this Agreement. Development conditions recommended in the City's Determination of Nonsignificance or, as applicable, Mitigated Determination of Nonsignificance issued in connection with the City's action to review and approve this Agreement are incorporated in the approval of the Approved Site Plan. The City shall not exercise its substantive SEPA authority to impose conditions on Project approvals issued during the term of this Agreement in a manner that is inconsistent with this Agreement or the Existing Land Use Regulations.

Section 11. Improvements Required for Issuance of Certificates of Occupancy. Notwithstanding the phased approach to development of the Project, Developer acknowledges and agrees, to the extent that certain amenities associated with the Project are required by the KMC to be available to all phases of the Project for reasons including health, safety and welfare of residents, tenants, occupants and others using or visiting the Project, such amenities shall be constructed and completed prior to issuance of any certificate of occupancy for any phase of the Project. To the extent that certain amenities associated with the Project are not required by the KMC to be available to all phases of the Project, such amenities shall be constructed and completed for each phase individually prior to issuance of any certificate of occupancy for such phase. The fact that any such amenity has not been provided shall not preclude the issuance of a Temporary Certificate of Occupancy so long as all amenities required for the phase for which a Temporary Certificate of Occupancy is sought have been completed in accordance with the Development Requirements. In accordance with KMC Section 21.20.050, no temporary certificate of occupancy for a completed phase may be issued until: (i) drainage facility improvements are functional, (ii) required parking for such phase is provided, and (iii) safe access for such phase is provided. The following amenities, as shown on the Approved Site Plan and Phasing Plan, shall be constructed in accordance with the following schedule:

11.1 Drainage Standards; Surface Water Runoff Policies; Surface Water Drainage Facilities. The City will permit a reduction in

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flow control standards to "Reduced Basic Flow Control Standards" as permitted in KCSWDM 1.2.3.B and 1.2.3.A, in lieu of the standard stated in KMC 13.35.025.B.4, provided Developer shows, to City's satisfaction, that flooding as a result of the Project will not be worsened along the downstream corridor and that the Project can meet all conditions of the exception allowed by KCSWDM 1.2.3.B and 1.2.3.A. Allowed discharge rates from the Project will be established based on the discharge rates from the existing onsite detention facility. King County Runoff Time Series hydrologic model or Western Washington Continuous Simulation Hydrology Model (WWHM) will be used to calculate the flows. The existing ground cover conditions as existing today will be used to generate the flows tributary to the existing detention facility, provide that all conditions of the exception are met. The flow control BMP (LID) requirement per KCSWDM 1.2.3.3 (and Section 5.2) will still be applicable for the Project.

11.2 Phase D. In the event that Phase D is constructed before any other Phase, Developer shall be required to provide only such parking, drainage facilities, landscaping, and street frontage improvements as are required by the KMC to serve Phase D.

Section 12. Coordination with Adjacent Property Owners. Developer acknowledges that the Project is part of the "Kenmore Village" properties and that the real property adjoining the Property to the north is under development and/or planned for development as residential units commonly known as Spencer 68, and that such development is planned to occur on an essentially contemporaneous basis with the Project; *provided*, neither the foregoing nor any other statement in this Section is intended as a representation, warranty or guarantee, express or implied, of any particular development and is stated solely for background purposes. Developer acknowledges the Project is also located adjacent to the Town Green, which the City owns and intends to develop with public space and a community building, and adjacent to an existing retail business to the west of the Property. Developer shall work cooperatively with the existing retail business owner to the west of the Property on the parking lot improvements. Developer and the City shall work cooperatively in the development of their respective properties and shall make commercially reasonable efforts to avoid conflicts in the respective construction schedules for the Town Green and the Project. Such coordination shall include (i) consistent development and common area standards; and (ii) site plan designs which take into account and seek to minimize adverse impacts of improvements (e.g., loading docks) on their respective adjacent properties. Developer and the City shall further cooperate in good faith to negotiate and grant access, utility, and construction easements that are reasonably necessary or desirable in connection with the development of the Project, and to construct utilities to serve the Project and the Phase D Property, to the extent that utilities are practicable and commercially reasonable, provided the Project utilities proposed within the Town Green must be in place prior to October 1, 2015, and provided further that the

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City issues a permit for the utilities prior to August 17, 2015. This date may be extended at the sole discretion of the City Manager. The City will not grant a utility easement or allow the Town Green improvements to be removed once the Town Green improvements are installed. The Developer agrees to demolish and dispose of the buildings and asphalt on the Phase A, Phase B/C, and Town Green Properties by October 1, 2015, provided demolition permits have been issued on or prior to August 17, 2015. The Agreement for Purchase, Sale and Development of Real Property between Developer and the City outlines the cost allocation to demolish the existing structure on the Town Green. The Developer further agrees to place fill dirt, (grade and compact it) on the Town Green Property to the City's Town Green site design specifications, provided the quality of the fill dirt is tested for compaction and suitability by the City's geotechnical consultant during the grading and determined to be suitable for such use by the consultant. City is also responsible for providing a licensed surveyor to certify and confirm final grades and compaction. If during excavation the fill dirt is determined not to be suitable, the Developer is responsible for the fill dirt and/or exporting costs. Developer further agrees that if Phase C is not under construction by July 1, 2017, unless date is extended by the City Manager, Developer shall provide a temporary parking surface, such as asphalt, gravel or other suitable material, on the Phase C property subject to construction and shoring constraints of the site.

12.1 Parking Lot Maintenance. Pursuant to that certain Amended and Restated Reciprocal Grant of Easements and Agreement for Joint Maintenance of Real Property recorded in the real property records of King County, Washington, as recording number 20141114000894, the owner of the Post Office Parcel is responsible to pay for the maintenance and repair of the surfaces, structures and capital improvements located on the Post Office Parcel. The City shall, at the City's expense, seal coat and restripe the parking lot located on the Post Office Parcel within sixty (60) days of Developer's completion of the parking lot on the Parcel A Property. If the Post Office Parcel is sold prior to Developer's completion of the parking lot on the Parcel A Property, the City shall record an instrument against the Post Office Parcel requiring the owner of the Post Office Parcel to resurface and restripe the parking lot located on the Post Office Parcel within sixty (60) days of Developer's completion of the parking lot on the Parcel A Property.

Section 13. Termination.

13.1 This Agreement shall expire and be of no further force and effect if the development contemplated in this Agreement and all of the permits and/or approvals issued by the City for such development are not substantially underway prior to expiration of such permits and/or approvals.

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13.2 Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City for the Project or any portion thereof. The Approved Site Plan and Phasing Plan shall be in full force and effect during the term of this Agreement, provided that Developer meets the conditions and time schedules specified in the Phasing Plan, as such time schedules may be extended in accordance with KMC section 18.105.060.

13.3 Covenants of the City and Developer expressed in this Agreement shall run with the land and shall be binding on each of Developer and City and their respective successors and assigns. Any covenant expressed in this Agreement which, by its terms states that it shall survive termination of this Agreement, shall remain in effect beyond and shall not be deemed terminated by termination of this Agreement. This Agreement shall terminate upon the expiration of the term identified in Section 6 or upon issuance of the certificate of occupancy for the final Phase of the Project, whichever first occurs. Upon the occurrence of either event identified in the immediately preceding sentence, the City shall record a notice of termination in a form substantially similar to that notice attached as Exhibit C.

Section 14. Effect of Termination on Developer Covenants and Obligations. Termination of this Agreement shall not affect, cancel or result in termination of any of the Developer's obligations under applicable law (i) to comply with the City Comprehensive Plan and the terms and conditions of any applicable zoning or land use regulation or other land use entitlements approved with respect to the Property, or (ii) to pay assessments, liens, fees or taxes (all of the foregoing, collectively, "Post Termination Obligations"). The Post Termination Obligations shall continue to run with the land comprising the Property and shall be binding on Developer and successors and assignees of Developer and all others acquiring any interest in the Property or any portion thereof by or through Developer.

Section 15. Default.

15.1 Subject to extensions of time by mutual consent in writing, failure or delay by either party to perform any legal requirement of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days' notice in writing, specifying the nature of the alleged default, the manner of cure, and a reasonable cure period in which said default may be cured. During this reasonable cure period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

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15.2 After notice and expiration of the reasonable cure period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the KMC, and to obtain penalties and costs as provided in the KMC for violations of this Agreement and the KMC.

Section 16. Annual Review. The Developer shall provide a report to the City Manager regarding the status of the Project implemented under this Agreement at least every twelve (12) months during the term of this Agreement.

Section 17. Effects upon Termination on City. Upon any termination of this Agreement as to Developer or any portion of the Property, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement, shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to then-existing planning and zoning laws).

Section 18. Assignment and Assumption. This Agreement shall be subject to the limitations on the sale, transfer and change of ownership of the Property set forth in the Declaration of Covenants Regarding Transfer recorded in the real property records of King County, Washington, on March 10, 2015, as recording number 20150310001417; provided, that Developer shall not be restricted or prohibited from entering into (i) a residential lease of any unit in the Project (except Developer cannot enter into a ground lease of all or substantially all of the Property or any substantial portion thereof with any person or entity not a resident of the Property); (ii) any mortgage, deed of trust, security agreement or security instrument granted or entered by Developer to provide financing for Developer's purchase of the Property or performance of its obligations to the City with regards to the Project; or (iii) a Transfer, or series of Transfers which in the aggregate, does not or do not result in a change of control of the Developer's interests in the Property or in Developer. The foregoing is intended to allow Developer to add debt and/or equity-related investment partners to the ownership of the Property or any Phase thereof, within the limits expressed in this Section 18. These provisions can be reasonably modified or waived by the City Manager from time to time upon request of Developer.

Section 19. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits, including, but not limited to the Post-Termination Obligations, shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties, their respective heirs, successors and assigns. Developer and its successors and assigns and every purchaser, assignee or transferee of an interest in the Property, or any portion thereof (whether such purchase, assignment or transfer is voluntary or involuntary, by foreclosure, judicial sale,

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operation of law or otherwise), shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred to it.

Section 20. Amendment to Agreement; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200). Nothing in this Agreement shall prevent the City Council from amending its Comprehensive Plan, Zoning KMC, Official Zoning Map or development regulations affecting the Property during the term of this Agreement, to the extent such amendment is required by a serious threat to public health and safety. Nothing in this Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning KMC, Official Zoning Map or development regulations relating to the Property after termination of this Agreement.

Section 21. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid certified mail, commercial courier or package delivery service, or by hand delivery to the party being notified, at its address as follows:

If to the Developer: MSPT XI LLC Attn: Kelly Price 12332 NE 115 th Place Kirkland, WA 98033	If to the City: City of Kenmore Attn: Rob Karlinsey, City Manager 18120 68 th Ave. N.E. Kenmore, WA 98028
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Notice shall be deemed received on the date of delivery to the recipient's address stated in this Section or, if sent via certified mail, on the second business day after mailed; or if by commercial courier or package delivery service, on the first business day after placed therewith; or on the date of actual delivery if hand delivered. Notice to any successor of either party shall be required to be given to such successor only after such successor has provided notice to the other party of its name and address for notice. Either party may from time to time advise the other of a new address for such notices, demands or correspondence by giving notice of such new address in the same manner as providing other notice.

Section 22. Reimbursement for Agreement Expenses of the City. Developer agrees to reimburse the City for certain actual expenses incurred by City directly relating to this Agreement, including reasonable recording fees, publishing fees and any additional staffing employees and third-party consultant

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expenses necessary for expedited review. Such payment of all fees shall be made, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer, which such statement (and supporting documentation) shall provide, in reasonable detail, an accounting of all actual expenses incurred by the City in the performance of its obligations within the above-noted cost categories.

Section 23. Relationship of Parties. Developer and the City shall not be construed as joint venturers or general partners, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Developer shall have no right or authority, express or implied, to commit or otherwise obligate the City in any manner whatever except to the extent specifically provided herein or specifically authorized in writing by the City. The City shall have no right or authority, express or implied, to commit or otherwise obligate Developer in any manner whatever except to the extent specifically provided herein or specifically authorized in writing by Developer.

Section 24. No Third Party Rights. The provisions of this Agreement are intended for the benefit of, and may only be enforced by, the parties hereto and their respective successors and permitted assigns. None of the rights or obligations of the parties herein set forth (or implied) is intended to confer any claim, cause of action, remedy, defense, legal justification, indemnity, contribution claim, set-off, or other right, whatsoever upon or otherwise inure to the benefit of any contractor, architect, consultant, subcontractor, worker, supplier, mechanic, insurer, surety, guest, member of the public, or other third parties having dealing with either of the parties hereto or involved, in any manner, in the Property or the Project.

Section 25. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated by any party to this Agreement to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in King County Superior Court or the U.S. District Court for the Western District of Washington. The parties hereto consent to the personal jurisdiction of each of such courts and waive the right to file suit elsewhere.

Section 26. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party to challenge this Agreement or any provision herein, each party shall be responsible for payment of legal fees of its counsel and related expenses to defend this Agreement or any provision hereof.

Section 27. Force Majeure.

27.1 Each party shall notify the other promptly of the occurrence of any Force Majeure event, occurrence or condition, as a condition to

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claiming such event, occurrence or condition constitutes Force Majeure and shall act promptly to proceed with its performance as soon as practicable after such cause for delay ceases or is terminated.

27.2 This Agreement relates to Project permit applications and approvals, such as building permits, right-of-way construction, and encroachment permits. In the event of an appeal, if this Agreement is upheld by final judicial decision, the term established in this Agreement shall commence on the date of entry of a final order upholding this Agreement.

Section 28. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of this Agreement by any party in default hereof. All terms and provisions of this Development Agreement are material.

Section 29. Developer Indemnification. Developer shall defend, indemnify and hold harmless the City, its officers, officials, employees, and agents, from any and all damages, claims, demands, suits, actions, costs, fines, penalties and liability of any kind, including attorneys' fees (collectively referred to as "Damages"), arising in whole or in part from any negligent acts, errors or omissions of Developer in the performance of this Agreement. However, if any Damages are caused by or result from the concurrent negligence of Developer and the City, Developer's liability shall be only to the extent of Developer's negligence. The foregoing indemnity is specifically and expressly intended to constitute Developer's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated. The provisions of this section shall survive the expiration or termination of this Agreement.

Section 30. City Indemnification. The City shall defend, indemnify and hold harmless Developer, its officers, officials, employees, and agents, from any and all damages, claims, demands, suits, actions, costs, fines, penalties and liability of any kind, including attorneys' fees (collectively referred to as "Damages"), arising in whole or in part from any negligent acts, errors or omissions of the City in the performance of this Agreement. However, if any Damages are caused by or result from the concurrent negligence of the City and Developer, the City's liability shall be only to the extent of the City's negligence. The foregoing indemnity is specifically and expressly intended to constitute the City's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated. The provisions of this section shall survive the expiration or termination of this Agreement

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Section 31. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the Adopting Resolution, such invalidity shall not affect the validity of the remainder of this Agreement.

Section 32. Complete Agreement. This Agreement together with the exhibits annexed hereto or referred to herein is intended to be the entire agreement of the parties with regard to the subject matter hereof and may only be amended with the written consent of both parties.

Section 33. Captions and Headings. Captions and headings used in this Agreement are for convenience of reference only and are not part of the terms of this Agreement or to be used to construe, interpret, modify, qualify, vary or supplement any term, condition, covenant or provision of this Agreement.

Section 34. Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Facsimile or .pdf signatures on this Agreement shall constitute original signatures of the parties.

Section 35. Recording Required. This Agreement shall be recorded with King County at Developer's expense. Upon termination of the Agreement, a notice of termination, in a form substantially similar to that notice attached as Exhibit D, shall also be executed by the City in accordance with Section 16 above and provided to Developer or, at Developer's option, recorded at Developer's expense.

[Signatures Next Page]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates set forth below:

DEVELOPER:

MSPT XI LLC

By: managers Street Property group, LLC

By: [Signature]

Name: Kelly Price

Its: President

Date: 8-3-15

CITY:

CITY OF KENMORE

By: [Signature]

Name: Rob Karlinse

Its: City Manager

Date: 7-28-15

ATTEST:

[Signature]
City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney

City of Kenmore Contract No. 15-C1449

STATE OF WASHINGTON)
) ss.
 COUNTY OF King)

I certify that I know or have satisfactory evidence that Kelly Price 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 President of Main Street Property Group LLC, Manager of MSPTX LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 8/3/2015



Printed: Jacqueline Hizey
 NOTARY PUBLIC in and for
 Washington
 Residing at: Woodinville, WA
 My appointment expires: May 10, 2016

STATE OF WASHINGTON)
) ss.
 COUNTY OF King)

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

DATED: 7/28/2015



Printed: Kathleen R. Hicks
 NOTARY PUBLIC in and for
 Washington
 Residing at: Kenmore, WA
 My appointment expires: 01-01-2017

EXHIBIT A
[The Real Property]

Parcels D and E of Kenmore Binding Site Plan, BSP2015-002, recorded February 6, 2015, under Recording No. 20150206000972, in Volume 268 of Plats, pages 54 and 55, records of King County, Washington.

EXHIBIT B
[Approved Site Plan and Phasing Plan]



City of Kenmore Development Services
Findings, Conclusions, and Conditions of Approval
July 16, 2015 – Final Revised
Spencer Square Site Plan Approval – File CSP2014-107

I. SUMMARY OF PROPOSAL:

Proposal to construct 3 new buildings with associated parking and site improvements on a 2.34 acre site within the Downtown Commercial (DC) zone. The development will include a 20,000 square foot single-story commercial building; a 5 story mixed use building with structured parking, commercial space at-grade on 68th Ave NE, and 94 residential units on upper floors; a 5,000 square foot restaurant building adjacent to NE 181st Street. Access to the site will be from the existing driveway on NE 181st Street and structured parking access to the mixed use building on 68th Avenue NE. Three existing commercial/retail buildings will be demolished to make way for the development.

II. PROJECT INFORMATION:

Applicant/Owner	MSPT XI LLC 12332 NE 115 th Place Kirkland, WA 98033
Site Address	6728 & 6750 NE 181 st Street
Parcel ID Numbers	3820200020; 3820200030; 3820200010
Site Area	2.34 acres
Zoning	Downtown Commercial (DC)
Environmentally Critical Areas	None
Proposed Uses	Professional/Medical Office; Multifamily; Eating & Drinking; Commercial uses listed as permitted in the DC zone
Surrounding Uses	Multifamily (north) Future Town Green & Pavilion (south) City Hall (east) Retail & Post Office (west)
Number of Dwelling Units	100
Number of Buildings	3
School District	Northshore School District
Water/Sewer	Northshore Utility District
Fire District	Northshore – King County Fire District #16

III. REVIEW PROCESS:

The Site Plan application has been processed as a Type 2 administrative decision pursuant to Kenmore Municipal Code (KMC) 19.25. An associated Development Agreement authorized under KMC 18.110 has been reviewed concurrently with the Site Plan application. Pursuant to KMC 18.110.050.F, an application for a Type 2 land use decision shall be reviewed and processed

concurrently with the Development Agreement. The 7/16/15 final decision on the Site Plan shall become effective on the date that the City Council passes an ordinance for the Development Agreement. A final SEPA determination will be issued upon the effective date of the Site Plan. The Development Agreement, City Manager recommendation on the Development Agreement, and Ordinance #15-0401 is scheduled for City Council consideration on 7/27/15.

The key milestones on the Site Plan application to date are as follows:

- 5/13/15: Application filed.
- 6/10/15: Application determined complete pursuant to KMC 19.25.050.
- 6/18/15: Notice of Application and Optional SEPA Notice with 21 day comment period issued pursuant to KMC 19.25.060.
- 6/24/15: Revised plans and information submitted by applicant.
- 7/7/15: City's first review comments sent to applicant.
- 7/9/15: Notice of Application and SEPA comment period ended.
- 7/16/15: Applicant's response to City's first review comments received.
- 7/16/15: Final decision on the site plan issued.

IV. **FINDINGS AND CONCLUSIONS:**

In accordance with KMC 18.105.050, the City may approve, deny, or approve with conditions an application for a Site Plan. The decision shall be based on the approval criteria stated therein and are intended to be satisfied by the findings, conclusions, and conditions within this report.

The Site Plan application has been reviewed for compliance with the Kenmore Zoning Code (KMC Title 18), the 2009 King County Surface Water Design Manual (KCSWDM) as adopted in KMC 13.35, the 1993 King County Road Standards (KCRS) as adopted in KMC 12.50, and other applicable City regulations.

Departures from Development Standards: Departures from development standards may be requested and approved for properties in the DC zone through the development agreement process provided they are offset by the provision of a benefit to the City of equal or greater value relative to the departure requested. The applicant requested departures from several development regulations which are offset by public benefits related to those identified in both the Development Agreement and the City Manager recommendation to the City Council on the Development Agreement. The Site Plan findings and conclusions reflect the requested departures. However, the development standard departures are subject to Council approval of the Development Agreement.

The following are findings and conclusions:

1. **Property Description**

The site is located directly south of Phase 1 of the Spencer68 multifamily development currently under construction. It fronts 68th Avenue NE on the east, the future Town Green and pavilion building and a portion of NE 181st Street on the south, and Kenmore Camera on the west. The site is relatively flat and contains 3 single-story commercial/retail buildings with paved parking. The building at 6734 NE 181st Street crosses the shared property line with the property planned for the future pavilion building (parcel 3820200040) and will be demolished in conjunction with all other improvements on site. A portion of the grading and parking lot reconfiguration will occur on the Kenmore Camera property (parcel 6181700456) and a portion of the utility and grading work will occur on the Town Green and pavilion site (parcels 3820200040; 3820200050).

2. Kenmore Comprehensive Plan

- a. The Site Plan application has been reviewed for compliance with the adopted policies of the Kenmore Comprehensive Plan. KMC Title 18 “Zoning,” and other applicable City development regulations have been adopted to ensure consistency with and implement the Kenmore Comprehensive Plan. The application is consistent with the following objectives and policies of the Comprehensive Plan, among others not listed:
 - i. Policy LU-5.1.3 of the Downtown Sub-Element of the Comprehensive Plan is to “provide routes for pedestrian, auto, bicycle, transit and truck travel with convenient access to each major destination. Buildings should be close to sidewalks to promote walking and browsing, with parking areas located on the side or rear of buildings.” The development will promote walking by locating buildings close to the new 10 foot wide sidewalks along 68th Avenue NE and by providing a new pedestrian walkway onto the site from 68th Avenue NE. Parking areas will be located on the interior of the site behind, to the sides of, and under the mixed use building.
 - ii. Policy LU-5.2.6 of the Downtown Sub-Element of the Comprehensive Plan is to “promote pedestrian-friendly streets with street furniture and trees. Develop street trees and vegetation standards that unify the Downtown, define Downtown streets, and allow for appropriate business visibility. Incorporate street furniture and art into Downtown street standards, including benches, trash and recycling receptacles, tree grates, street lamps, and other amenities.” The development will provide new 10 foot wide sidewalks on 68th Avenue NE. Other street improvements will include street trees, pedestrian lighting, utility undergrounding, electrical receptacles for street trees, light pole brackets for banners and flower baskets, as well as drip irrigation for street trees and hanging flower baskets.
 - iii. Objective LU-5.4 of the Downtown Sub-Element of the Comprehensive Plan is to “provide housing and commercial development that supports transit.” The residential density will be 43 dwelling units per acre (total of 100 dwelling units) and is within less than one-quarter mile of multiple regional bus transit routes on NE Bothell Way providing service to future residents of the development.

CONCLUSION: The application has been reviewed for compliance with the Kenmore Comprehensive Plan as well as applicable development regulations which implement the policies of the Comprehensive Plan. The application meets the objectives and policies of the Comprehensive Plan.

3. Public Notification & SEPA (KMC 19.25, RCW 43.21C, KMC 19.35)

- a. The application exceeds the categorical exemptions from the State Environmental Policy Act (SEPA) pursuant to KMC 19.35.060 and WAC 197-11-800. A SEPA Environmental Checklist was completed by the applicant and filed with the application.
- b. The Optional Determination of Non-Significance (DNS) process was used to combine the 21 day Notice of Application comment period for the Site Plan application and SEPA comment period pursuant to WAC 197-11-355. The comment period ended 7/9/15. No comments were received during the comment period.
- c. A final Notice of Decision and SEPA DNS will be issued upon the effective date of the Site Plan, following approval of the Development Agreement by the City Council in accordance with KMC 18.110.050.F. The SEPA Environmental Checklist will be attached to the SEPA DNS and mailed

to SEPA agencies in conjunction with Notice of Decision requirements in KMC 19.25.090.

CONCLUSION: The application exceeds the SEPA exemption thresholds. A SEPA Environmental Checklist has been completed and reviewed by the City. A SEPA DNS will be issued in accordance with KMC 19.35 and WAC 197-11. In addition, public notification requirements in KMC 19.25 have been implemented.

4. Downtown Commercial Zone (KMC 18.25)

- a. The site is zoned Downtown Commercial (DC) and will consist of 3 new buildings:
 - i. A mixed use building in the NE corner of the site will contain 1 story of structured parking below the grade of 68th Avenue NE, 1 story of professional/medical office consisting of 19,975 square feet at-grade with 68th Avenue NE, and 4 stories of multifamily residential units with 1 loft level above. These proposed uses are permitted outright in the DC zone pursuant to KMC 18.25.020.
 - ii. Directly south of the mixed use building will be a 1-2 story commercial building with a maximum size of 20,000 square feet. The land uses within this building are yet to be determined, but will be consistent with the permitted uses within the DC zone pursuant to KMC 18.25.020.
 - iii. A single-story restaurant building will be located in the SW corner of the site and will be approximately 5,000 square feet in size. Eating and drinking places are permitted outright in the DC zone pursuant to KMC 18.25.020.
- b. Pursuant to KMC 18.25.020, Table A Footnote #5, multifamily developments fronting on 68th Avenue NE shall have a minimum of 80 percent of the structures street front façade at street level and it shall be occupied by nonresidential uses and shall extend in depth to at least 30 feet. The first floor of the mixed use building will be 154'11" in length and will be at-grade with 68th Avenue NE. Over 80 percent of the total façade at the street level will consist of nonresidential uses (professional/medical office) and will exceed a depth of 30 feet. The mixed use building complies.
- c. The DC zone allows a maximum residential density of 72 dwelling units per acre and a minimum residential density of 36 dwelling units per acre in accordance with KMC 18.25.040. The mixed use building will contain 94 dwelling units, putting the density for the overall development at approximately 40 dwelling units per acre and within the maximum allowable density. The development complies with the maximum allowable residential density.
- d. Pursuant to KMC 18.25.040, the street setback may be a minimum of 0 feet and a maximum of 10 feet. The City may authorize intrusions of structural elements into the public right-of-way, including awnings, columns, bay windows, or others through the design review, site plan review, building permit review, or right-of-way use permit processes, if such intrusions would not impede safe travel by pedestrians, solar access is not significantly diminished, and City liability is limited. The development of the mixed use building will include projections into the 68th Avenue NE right-of-way of up to 4 feet. These projections into the right-of-way are allowed. Projections will not be allowed to be less than 7 feet in vertical clearance. Projections for the commercial and restaurant buildings will be reviewed during the building design review process.
- e. Pursuant to KMC 18.25.040, the minimum interior setback is 0 feet and increases to 20 feet when

the site is adjoining a property zoned R-1 to R-12. The site is not adjoining any R-1 to R-12 zoned properties and complies with the minimum allowable interior property line setback.

- f. The maximum allowable building height for developments providing structured parking is 65 feet in accordance with KMC 18.25.040. Pursuant to KMC 18.30.050.A, building height is measured from the "average finished grade" to the highest point of the roof. The building elevations for the mixed use building indicate the building height will be 75'8". The proposal to exceed the maximum allowable height is being authorized by the associated Development Agreement.
- g. The allowable base height in the DC zone is 35 feet. Preliminary plans for the commercial and restaurant buildings indicate they will be within the allowable height limit. The final designs and building plans for these buildings will be reviewed for compliance with the allowable height limits.
- h. The maximum allowable impervious surface coverage in the DC zone is 90 percent of the lot area. The proposed impervious surface coverage for the site is 85 percent. The impervious surface coverage complies.

CONCLUSION: The application has been reviewed for compliance with the DC zone development standards and will comply with the applicable development standards. Departures from the DC zone development standards have been identified as part of the associated Development Agreement and approval of such departures are subject to final approval of the Development Agreement.

5. Landscaping (KMC 18.35)

- a. The development is subject to the landscape requirements in KMC 18.35. A conceptual landscape plan (Dahlin, dated received 7/16/15) was submitted and reviewed as part of the Site Plan application.
- b. The conceptual landscape plan provides an amount of landscaping on the site which meets the minimum requirements pursuant to KMC 18.35.045. However, the applicant has requested a departure from the landscape standards with regard to the landscape locational requirements. A detailed plan identifying the final code departures has yet to be submitted. Departures from locational requirements will be authorized by the Development Agreement on the condition that a final detailed landscape plan identifying plant types, quantities, locations, etc. will be required to be submitted during engineering/building permit review and that landscape locations will generally need to comply with the conceptual plans submitted to date.

CONCLUSION: The application has been reviewed for compliance with landscape requirements outlined in KMC 18.35 and will comply with applicable standards. Departures from the landscape requirements have been identified as part of the associated Development Agreement and approval of the departure is subject to final approval of the Development Agreement.

6. Downtown Design Standards (KMC 18.52)

- a. The site is subject design review under the Downtown Design Standards pursuant to KMC 18.52.070. Applications subject to design review shall be reviewed and processed following the permit procedures for the primary permit application consistent with KMC 19.25, as stated in KMC 18.52.075.A. Design review for the site plan and mixed use building was conducted concurrently with the Site Plan application. As authorized by the Development Agreement, design review for the commercial building and the restaurant building will occur at the time of

building permit submittal for each respective building and will require compliance with KMC 18.52 and the associated provisions of the Development Agreement prior to building permit issuance.

- b. The site is located within the “northwest quadrant” of the downtown subarea. As required in KMC 18.52.100.B.1, through block connections are required in the northwest quadrant. A pedestrian walkway will be provided north from the Town Green/NE 181st Street and will connect to the existing pedestrian staircase for the adjacent Spencer 68 apartments. A walkway will also be provided on 68th Avenue NE abutting the south side of the mixed use building and will provide an east-west walkway onto the site. The walkway will extend through the site where it will intersect with the north-south walkway and connect with the existing walkway extending through the adjacent Kenmore Camera site. The proposed pedestrian walkways comply with design standards.
- c. Minimum pedestrian walkway (not including sidewalks on the perimeters of the site) widths for buildings greater than 3 stories in height is 8 feet, while the minimum average width is 12 feet in accordance with KMC 18.52.100.B.2.b. As shown on the site plan, the proposed pedestrian walkways abutting the mixed use building will vary from 8-18 feet in width. The minimum walkway width of 8 feet will be satisfied. A request to deviate from the average width of 12 feet has been requested and is authorized by the Development Agreement. Walkways throughout the remainder of the site will vary between 6-15 feet in width. Minimum pedestrian walkway widths comply.
- d. A conceptual level of detail has been submitted for lighting elements to demonstrate compliance with the lighting standards in KMC 18.52.140. Lighting will be provided with a combination of pedestrian-scaled lighting (e.g. bollards, in-ground lighting), while additional lighting will be provided on the buildings, throughout the parking lot, and on the site’s frontage in the form of street lighting. A final comprehensive lighting plan will be required during building/engineering permit review and will be required to comply with minimum lighting standards in KMC 18.52.140.
- e. Outdoor service and storage areas, mechanical equipment, and trash enclosures are required to comply with the screening requirements in KMC 18.52.200. Additional detail to verify compliance with applicable screening requirements will be required on subsequent architectural and civil plans. Final review for compliance with the screening requirements will occur during building/engineering permit review.
- f. Corner feature elements described in KMC 18.52.210.A.3 are required at the intersection of the mixed use building and the pedestrian walkway entering the site from 68th Avenue NE (abutting the mixed use building). The site plan identifies features to demonstrate compliance with these standards. Final construction plans will be verified to ensure compliance with the corner feature requirements.
- g. KMC 18.52.230 requires that structured parking be visually integrated into a building. The mixed use building elevations generally demonstrate compliance with the structured parking design requirements. Final building plans will be reviewed for compliance with the structured parking requirements prior to building permit issuance.
- h. Blank walls and side walls shall be detailed or treated architecturally to maintain visual interest. Additional details related to the interim condition between phases on the pedestrian walkway and stairs abutting the mixed use building and the west elevation of the mixed use building will be

required during engineering/building permit review to ensure compliance with blank wall and side wall screening.

- i. Weather protection is required pursuant to KMC 18.52.290. Weather protection is being provided on the mixed use building's property frontage abutting 68th Avenue NE. The applicant has requested a departure from the weather protection standards as part of the Development Agreement, but the extent of the departure has not been identified by the applicant. Canopies have been identified on the building elevations, and will be required to be incorporated into the final project design and provide adequate weather protection to the maximum extent feasible as determined by the City. Departures from weather protection requirements is authorized by the Development Agreement.
- j. The applicant has requested a departure from the building materials requirements in KMC 18.52.300 as part of the Development Agreement. Departures from the building materials requirements is authorized by the Development Agreement.
- k. Pursuant to KMC 18.52.310, visible building facades must incorporate design features in order to minimize the apparent bulk and mass of a building. A minimum of two of the five techniques listed in KMC 18.52.310 must be satisfied in order to comply with the Downtown Design Standards. The mixed use building will provide horizontal building modulation, modulated roofline, and façade articulation that includes changes in colors, decks and balconies, and repeating distinctive window patterns. Details of these features are illustrated in the building renderings and the floor plans (Dahlin, A2.2, A2.6, attached). The mixed use building complies with KMC 18.52.310. The commercial building and restaurant building will be reviewed for compliance with this section at the time design review occurs.

CONCLUSION: The application was reviewed for compliance with KMC 18.52. The application complies with the applicable standards provided in the Downtown Design Standards, KMC 18.52. Departures from the Downtown Design Standards have been identified and are authorized subject to final approval of the associated Development Agreement.

7. Road Standards, Traffic, & Parking (KMC 12.50, 1993 KCRS, & KMC 18.40)

- a. The portion of 68th Avenue NE fronting the site is classified as a downtown collector arterial (urban) street which requires a minimum 44 foot pavement width, vertical curb and gutter, 10 foot sidewalk utilizing a 2 foot by 2 foot scoring pattern, irrigated tree wells at the back of curb at 40 foot on center with above ground electrical receptacles, specialized street lighting with banner brackets, specialized pedestrian lighting with hanging flower pot brackets, undergrounded utilities, and a full-width 2 inch overlay for the entire length of the project frontage.
- b. The curb line along the City Hall site across 68th Avenue NE to the east may vary in width to exceed 44 feet total pavement width, however, the development shall align the face of curb 22 feet off of the right-of-way centerline; this placement would align with the current (and future) alignment of the curb to the south.
- c. The portion of 68th Avenue NE abutting the development site shall be improved to City standards except that the curb face shall be placed 22 feet west of the right-of-way centerline.
- d. A right-of-way dedication along 68th Avenue NE will be required for the development to meet the minimum right-of-way width. The new right-of-way line shall be drawn at the back of the

required frontage improvements.

- e. The 68th Avenue NE improvements shall generally be consistent with the improvements on the City Hall site on the east side of the 68th Avenue NE.
- f. The applicant has provided a Traffic Impact Analysis (TIA) (prepared by Transpo Group dated received 5/13/15) which is in alignment with the previous report for the Spencer 68 development to the north (CSP2013-073) and includes a Level of Service analysis of the intersection of 67th Avenue NE and 181st Street NE, an independent impact fee calculation, and shared parking analysis. The City takes no exception to the report's findings.
- g. The TIA (Transpo, dated received 5/13/15) demonstrates the development impacts to 67th Avenue NE and NE 181st Street will maintain an acceptable Level of Service with the current configuration of one travel lane in each direction at each leg of the stop-controlled intersection.
- h. The applicant requested a departure from all minimum parking requirements in KMC 18.40. The development is not subject to parking minimums as authorized by the Development Agreement.
- i. All parking stalls and access aisles shall comply with KMC 18.40.110; compliance with these regulations shall be verified during engineering permit review.
- j. Per KMC 18.40.030.E, the development shall provide 1 bicycle parking space per every 12 vehicle parking spaces and 1 indoor bicycle parking space per 2 apartment units, unless otherwise reduced or waived by the City Manager. Bicycle parking requirements will be conditioned to be verified during engineering permit review.
- k. The TIA (Transpo, dated received 5/13/15) demonstrates the development will generate 28 new PM peak-hour trips compared to the previous use. Accordingly, the development shall be required to pay traffic impact fees for 28 trips in accordance with KMC 20.47.120. The per trip fee value and timing of payment shall be in accordance with the associated Development Agreement.

CONCLUSION: The application was reviewed for compliance with the road standards and parking requirements as outlined in the 1993 KCRS, KMC 12.50, and KMC 18.40. The application complies with applicable standards. Departures from the standards have been identified as part of the associated Development Agreement and are authorized subject to final approval of the development agreement.

8. Surface Water (KMC 13.35 & 2009 KCSWDM)

- a. Based on the project scope the project will require Full Drainage Review per KMC 13.35 and 2009 King County Surface Water Design Manual (KCSWDM).
- b. The applicant has submitted conceptual civil plans and Preliminary Technical Information Report (TIR) (BlueLine, dated received 7/16/15) to demonstrate that the project will comply with drainage requirements.
- c. The development has proposed to address *KCSWDM Core Requirement #3: Flow Control* by utilizing the *direct discharge exemption* per KCSWDM page 1-37. The project is an adequate candidate for use of the exemption but additional calculations to verify the downstream capacity is adequate for full build out conditions are still needed. Additional information is required and shall be reviewed in further detail prior to engineering permit approval. If, for any reason, the

project cannot demonstrate full compliance with the requirement for the *direct discharge exemption*, a flow control facility designed to meet Level 2 flow control standards will be required.

- d. The development is a “redevelopment” project which will result in more than 5,000 new plus replaced pollution generating impervious surface and that drains to a major receiving water as defined in *KCSWDM Table 1.2.3.B*. Accordingly, per the Intent section on KCSWDM page 1-68, the project must provide a water quality treatment facility meeting the requirements for *Basic Water Quality Treatment* per KCSWDM 1.2.8.1.A.
- e. The development is a non-subdivision project which will be subject to the Flow Control Best Management Practice (BMP) Requirement per KCSWDM 5.2 and the applicant has provided a preliminary design which fully complies with the requirement. However, upon further review and information regarding contaminated soils on the adjacent parcel to the west, the City determined it is best to limit and restrict infiltration on the development site. Accordingly, the development will not be required to meet the *Flow Control BMPs Requirement* per KCSWDM 5.2. For additional information refer to the memo from City of Kenmore Civil Engineer Zack Richardson, PE, dated 6/30/15.

CONCLUSION: The application was reviewed for compliance with KMC 13.35 and the 2009 KCSWDM. The application will be conditioned to be reviewed for final compliance during construction permit review.

9. Fire Protection & Emergency Access (KMC Title 15 & KMC 18.45)

- a. Fire protection and emergency access requirements are outlined in KMC 18.45.080 and KMC Title 15. The Northshore Fire District Fire Marshal reviewed the application for compliance with applicable requirements and determined the application complies (exhibit 23).
- b. The application will be conditioned so that a final Fire Marshal review of construction plans will occur prior to issuance of any construction permits to ensure the development and buildings within the development comply with necessary fire protection and emergency access requirements.

CONCLUSION: The application meets the requirements for emergency access and applicable fire protection requirements. The application will be conditioned so that applicable fire protection and emergency access standards are incorporated into necessary plans and verified prior to project completion.

10. Water & Sewer (KMC Title 13 & KMC 18.45)

- a. The Northshore Utility District will serve the site with water and sewer. The application was reviewed for compliance with KMC 18.45.030 and 18.45.040 for adequate water and sewer services. Certificates of water and sewer availability were completed by the Northshore Utility District for the development and note that adequate water and sewer is available to serve the development.
- b. Sewer and water developer extensions with the Northshore Utility District will be required. Sewer service for the existing buildings, including the adjacent Kenmore Camera building, are provided by a common 6 inch side sewer. The stubs for the existing buildings to be demolished will need to be located and capped outside of the building. The 6 inch common line will need to remain in

service for Kenmore Camera or will need to be re-routed during construction. New water and sewer extensions are depicted on the preliminary utility plan and will include extensions through the future Town Green site to the south and connecting into the main lines in the NE 181st Street right-of-way. The application will be conditioned so that final water and sewer requirements will be identified during construction permit review.

CONCLUSION: The application meets the water and sewer requirements in KMC Title 13 and KMC 18.45. The application will be conditioned to ensure all requirements related to water and sewer are met prior to completion of the project.

11. Schools

- a. Residents living within the mixed use building will be served by the Northshore School District. The site plan was sent to the school district for review and completion of a Request for School Information form. According to the school district, all school-aged children will be expected to walk to the school bus stop located at the intersection of NE 185th Street and 68th Avenue NE.
- b. The Northshore School District notes that safe walking pathways to schools and bus stops are essential. Walking pathways will be provided from the mixed use building to the school bus stop location via new and existing sidewalks along 68th Avenue NE and the crosswalk at the intersection of NE 182nd Street and 68th Avenue NE. The crosswalk is delineated with pavement markings, signage, and flashing lights. As part of the development, 68th Avenue NE will be re-stripped and the turn lane at the crosswalk location will be eliminated, narrowing the roadway section to travel lanes thereby limiting the number of lanes children must cross. The new sidewalks and re-striping to be completed as part of the development, in conjunction with existing walking conditions to the school bus stop location, provide acceptable walking paths for school-aged children.

CONCLUSION: The development will be served by the Northshore School District. A combination of new improvements to be completed as part of the development and existing public sidewalks in the project vicinity will provide adequate walking paths for school-aged children walking to the school bus stop at the intersection NE 185th Street and 68th Avenue NE.

V. **CONDITIONS OF APPROVAL:**

Based upon the above Findings and Conclusions, the above referenced Site Plan application complies with KMC Title 18, as well as other adopted City regulations. The Site Plan application is hereby **approved**, subject to the following conditions:

A. General Conditions

1. The Site Plan approval shall not become effective until the City Council passes an ordinance authorizing the associated Development Agreement to be executed.
2. Departures from development regulations are subject to approval of the associated development agreement.
3. Separate City permits are required prior to beginning any construction activity and shall include, but not be limited to, engineering permit for all site work and a building permit for each proposed structure on the site. All construction permit plans shall comply with the approved site plan, conditions of approval, and the Development Agreement. Revisions and/or modifications to the site plan or construction permits shall be consistent with KMC 18.105, KMC 19.25.080, and as

otherwise may be authorized by the Development Agreement.

4. Unless otherwise authorized by the Development Agreement, all engineering and building permit plans shall comply with the minimum required development standards of the DC zone.
5. Site Plan approval does not limit the applicant's responsibility to obtain any required permit or license from the State or other regulatory body.

B. Conditions of Approval Required for Engineering and/or Building Permit Issuance

1. The project shall comply with all provisions of Full Drainage Review per KMC 13.35 and the 2009 King County Surface Water Design Manual as adopted by the City.
2. Prior to engineering permit approval, the applicant shall provide additional calculations to demonstrate the development has met all requirement of the direct *discharge exemption* per KCSWDM page 1-37. If the development cannot demonstrate full compliance with the requirement for the exemption, a flow control facility designed to meet *Level 2 flow Control Standard* per KCSWDM 1.2.3.B will be required.
3. The development shall provide a water quality treatment facility meeting the requirements for *Basic Water Quality Treatment* per KCSWDM 1.2.8.1.A.
4. The portion of 68th Avenue NE which fronts the development site shall be improved to provide a of minimum 22 feet of pavement measured between the face of curb and right-of-way centerline, vertical curb and gutter, 10 foot sidewalk utilizing a 2 foot by 2 foot scoring pattern, irrigated tree wells at the back of curb at 40 feet on center with above ground electrical receptacles, specialized street lighting with banner brackets, specialized pedestrian lighting with hanging flower pot brackets, drip irrigation for flower pots, undergrounded utilities, and a full-width 2 inch overlay for the entire length of the project frontage.
5. All parking stalls and access aisles shall comply with KMC 18.40.110; compliance with these regulations shall be verified during engineering permit review.
6. Per KMC 18.40.030.E, the development shall provide 1 bicycle parking space per every 12 vehicle parking spaces and 1 indoor bicycle parking space per 2 apartment units unless otherwise reduced or waived by the City Manager.
7. Copies of all easements and/or written property owner permissions for all off site work shall be submitted to the City prior to beginning any construction activities within off site locations.
8. No projections or obstructions with a vertical clearance less than 7 feet will be permitted within public walkways and/or right-of-ways.
9. All construction details and/or specifications of design elements shall be provided during engineering and/or building permit review as necessary to demonstrate compliance with required Downtown Design Standards in KMC 18.52 and to ensure construction of such elements.
10. The mixed use building plans shall comply with the approved building elevations and project renderings and shall incorporate all required features and elements required for compliance with the Downtown Design Standards in KMC 18.52, except for those departures authorized by the Development Agreement.

11. All pedestrian walkway requirements in KMC 18.52.100 and those identified on the approved site plan shall be incorporated into final engineering/building permit plans.
12. A final lighting plan in compliance with the minimum lighting standards in KMC 18.52.140 shall be approved prior to engineering/building permit issuance.
13. Final screening of outdoor service and storage areas, mechanical equipment, and trash enclosures shall be identified on all applicable plans and meet the screening requirements in KMC 18.52.200.
14. Parking garage integration requirements in KMC 18.52.230 shall be incorporated into the engineering/building plans.
15. Weather protection shall be provided pursuant to KMC 18.52.290 to the maximum extent feasible as determined by the City.
16. Engineering and building plans shall address blank wall screening requirements in KMC 18.52 as necessary to screen blank walls throughout the development site.
17. A final landscape plan shall be filed for review as part of the engineering/building permit review. The plan shall provide the minimum required amount of landscaping pursuant to KMC 18.35 and shall be consistent with the approved site plan and deviations to locational requirements authorized by the Development Agreement.
18. The applicant is responsible for payment of park impact and traffic impact fees as identified and authorized by the Development Agreement.
19. Engineering and building plans shall be reviewed for compliance with emergency access, fire alarm, and fire sprinkler requirements.
20. The applicant shall coordinate directly with the Northshore Utility District for final water and sewer requirements.

C. Conditions of Approval Required Prior to Certificate of Occupancy

1. Minimum required improvements, as identified by the City, associated with each building and phase shall be installed and approved by the City prior to issuance of a certificate of occupancy or temporary certificate of occupancy on each building.
2. The required right-of-way dedication on the 68th Avenue NE property frontage shall be completed and recorded prior to issuance of any final certificate of occupancy.
3. All required landscaping and elements required as part of the compliance with KMC 18.52, Downtown Design Standards, shall be completed and approved by the City prior to final certificate of occupancy.
4. Compliance with the bicycle parking requirements shall be verified prior to issuance of any final certificate of occupancy.

5. All fire department conditions related to emergency access, fire sprinklers, and fire alarms shall be satisfied for each certificate of occupancy issued for each building within all phases. All final fire department conditions shall be satisfied prior to final certificate of occupancy for any phase.
6. Final approval from the Northshore Utility District (NUD) shall be provided for all required water and sewer improvements prior to issuance of a final certificate of occupancy.

VI. APPEALS:

Pursuant to KMC 18.110.050.F, the final decision of the Development Services Director on the Site Plan and SEPA Determination shall become effective on the date that the City Council passes the ordinance for the Development Agreement. The period for appealing such final decision, as provided in KMC 19.25.020, shall commence on the date that the City Council passes such ordinance.

In accordance with KMC 19.25.020, the Site Plan decision and/or SEPA Determination may be appealed to the City of Kenmore Hearing Examiner. A Notice and Statement of appeal must be filed with the Kenmore City Clerk within 21 days from the effective date of this decision. The Notice and Statement of appeal shall state: 1) Specific reasons why the decision should be reversed or modified; and 2) The harm suffered or anticipated by the appellant and the relief sought. The scope of an appeal shall be based on matters or issues raised in the Statement of Appeal. Failure to file a Notice and Statement of appeal deprives the Hearing Examiner jurisdiction to consider the appeal.

The Notice and Statement of appeal must be submitted to the City Clerk at Kenmore City Hall no later than 21 days from the effective date (noted below), and be accompanied with a filing fee of \$125 payable to the City of Kenmore.

Date of Site Plan Administrative Decision: July 16, 2015

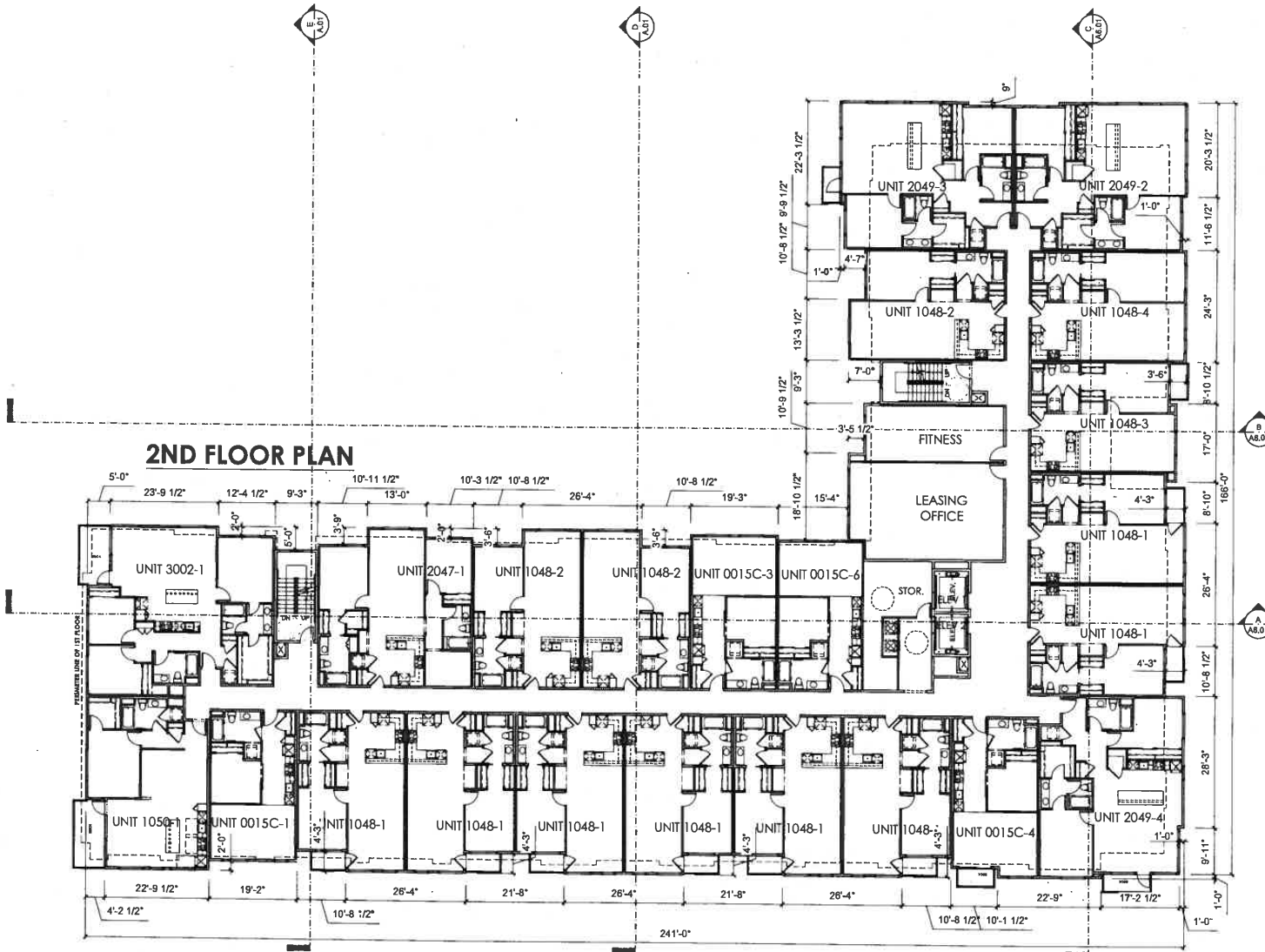
Decision issued by:


Bryan Hampson
Development Services Director

Development Agreement Ordinance: #15-0401

Effective Date of Site Plan Approval and SEPA Determination: July 27, 2015

Site Plan and SEPA Determination Appeal Deadline (21 days after effective date): August 17, 2015



DAHLMAN
group
529 South Center Avenue
Salinas, CA 92075
831-355-0544

SPENCER SQUARE
KENMORE
WASHINGTON

MAINSTREET
PROPERTY GROUP LLC

BUILDING PLAN NOTES

- ALL EXTERIOR DIMENSIONS TO FACE OF STUD, FACE OF FOUNDATION, & FACE OF STONEFRONT (S.O.F.).
- ASTERISK (*) AND/OR C.O.P. AS SHOWN ON DIMENSION STRINGS INDICATE GROUND OR DIMENSION AT CENTERLINE OF 1" AIR GAP BETWEEN PARTY WALLS.
- ALL INTERIOR DIMENSIONS TO FACE OF STUD (I.O.A.).
- ALL DIMENSIONS AT WINDOWS & DOORS ARE TO THE CENTERLINE (C.O.L.).
- ALL ANGLED WALLS (OTHER THAN 90 DEG.) SHALL BE 45 DEG. JOCK.
- ALL DOOR JAMBS ON HINGE SIDE SHALL BE 4" O.D.
- FOR NOTES AND ADDITIONAL INFORMATION, SEE INDIVIDUAL UNIT FLOOR PLANS.
- PROTECT ALL PARTY WALL CYP. BOARD FROM RAIN AND MOISTURE DURING CONSTRUCTION.
- BEFORE SEALING AIR SPACE BETWEEN PARTY WALLS, CYP. BOARD SHALL BE WITHOUT ANY MOISTURE.
- THE CONTRACTOR SHALL VERIFY ON SITE ALL GRADES, EXISTING IMPROVEMENTS, PROPERTY LINES, EASEMENTS, SETBACKS, UTILITIES AND SUB-STRUCTURES, WHERE DISCREPANCIES OCCUR, CONTACT THE CIVIL ENGINEER.
- FINISH GRADE SHALL PROVIDE POSITIVE DRAINAGE AWAY FROM BUILDING. SEE SLOPE REPORT FOR ANY SPECIFIC REQUIREMENTS.
- ALL ROOF DRAINAGE SHALL BE PIPED TO STREET OR APPROVED DRAINAGE FACILITY.
- IRRIGATION SYSTEM SHALL BE DESIGNED TO PREVENT THE SATURATION OF SOIL ADJACENT TO BUILDING.
- FOR LANDSCAPE AND DRAINAGE PLANS S.D. AND S.C.D.
- SEE FIRE ANNIUNCIATOR DRAWINGS FOR ALARM LOCATION AND HOORUP.
- WALL TAGS DO NOT CONTAIN EXHAUSTIVE TRIM INFORMATION, SEE EXTERIOR ELEVATION AND DETAILS FOR ADDITIONAL INFORMATION.

FIRE PROTECTION NOTES

- PROTECTION OF JOINTS AND PENETRATIONS IN FIRE-RESISTIVE ASSEMBLIES SHALL NOT BE CONCEALED FROM VIEW UNTIL INSPECTED AND APPROVED.
- FOR FIRE RATED WALL LOCATIONS, SEE SHEETS CA-1.1-1.3.

FIRE DEPARTMENT NOTES

- PRIOR TO ANY COMBUSTIBLE CONSTRUCTION ALL FIRE HYDRANTS ON SITE MUST BE OPERATIONAL WITHOUT EXCEPTION.
- MANUAL PULL STATIONS REQUIRED AT ALL MAIN ENTRANCES/EXIT. THIS INCLUDES TOP OF STAIRWELLS ETC.
- THE FIRE ACCESS ROAD SHALL BE ESTABLISHED WITH GRAVEL, NO GREATER THAN 1/4" ON EQUIVALENT PRIOR TO THE START OF COMBUSTIBLE CONSTRUCTION. IN ADDITION, THE FIRE ACCESS ROAD SHALL BE SUBJECT TO INSPECTION BY THE FIRE DEPARTMENT, AT WHICH TIME IF DESIRED, ACCESSORY, LTR MAY BE REQUIRED TO MAINTAIN REASONABLE AND SAFE ACCESS.

REVISIONS

OVERALL BUILDING PLAN
2ND FLOOR PLAN
SCALE: 1/8"=1'-0"

JOB NO. 1139.017 SHEET

DRAWN: BWB/M

CHECK: SW

DATE: 00-00-00 **A2.2**

MAINSTREET
PROPERTY GROUP LLC

ALL EXTERIOR DIMENSIONS TO FACE OF
STUD. FACE OF FOUNDATION, & FACE OF
STUD (S.D. & S.G.D.)
ASTERISK (*) AND/OR C.P. AS SHOWN ON
DRAWING SHALL BE CENTERLINE OF
DIMENSION AT CENTERLINE OF AIR
SPACE.
ALL INTERIOR DIMENSIONS TO FACE OF
STUD (S.D. & S.G.D.)
ALL DIMENSIONS AT WINDOWS & DOORS
ARE TO THE CENTERLINE (S.D. & S.G.D.)
ALL DIMENSIONS AT DOORS (S.D. & S.G.D.)
SHALL BE 46 INGS. (S.D. & S.G.D.)
ALL DIMENSIONS AT WALL SIDE SHALL BE
4" O.G.
ALL DIMENSIONS AND ADDITIONAL
INFORMATION SEE INDIVIDUAL UNIT FLOOR PLANS,
PARTIAL UNIT FLOOR PLANS, & UNIT
FLOOR PLANS.
ALL PARTIAL UNIT F.P., BOARD FROM
HALL AND MOBT.
CONSTRUCTION
ALL PARTIAL UNIT F.P. AND ALL SPACE
BETWEEN PARTY WALLS - F.P., BOARD SHALL
BE 46 INGS. (S.D. & S.G.D.)
THE CONTRACTOR SHALL VERIFY ON SITE
ALL DIMENSIONS AND OCCURANCE OF ALL
PROPERTY LINES, EASEMENTS, SETBACKS,
UTILITIES AND SUB-UTILITIES, WHERE
APPLICABLE AND OCCUR.
CIVIL ENGINEER
PROVIDE ALL BUILDING, POSITIVE
DRAINAGE AWAY FROM BUILDING. SEE
PARTIAL UNIT FLOOR PLANS AND UNIT
FLOOR PLANS FOR REQUIREMENTS.
ALL EXISTING DRIVEWAY SHALL BE PEPPED TO
STREET OR APPROVED DRIVEWAY FACILITY.
IRRIGATION SYSTEM SHALL BE DESIGNED
AND CONSTRUCTED IN ACCORDANCE WITH
NATURAL DRAINAGE AND SLOPE
ADJUSTMENT TO DRAINAGE
PLANS S.D. AND S.G.D.
SEE PARTIAL UNIT FLOOR PLANS AND UNIT
FLOOR PLANS FOR ALARM LOCATION AND HOODS
LOCATIONS.
SEE PARTIAL UNIT FLOOR PLANS AND UNIT
FLOOR PLANS FOR ADDITIONAL
ELEVATION AND DETAILS FOR EXTERIOR
FINISHES.

- PROTECTION OF JOINTS AND PENETRATIONS IN FIRE-RESISTIVE ASSEMBLIES SHALL NOT BE CONCEALED FROM VIEW UNTIL INSPECTED AND APPROVED.
- FOR FIRE RATED WALL LOCATIONS, SEE SHEETS CA1.1-1.3

- PRIOR TO ANY COMBUSTIBLE CONSTRUCTION ALL FIRE HYDRANTS ONSITE MUST BE OPERATIONAL WITHOUT EXCEPTION.
- MANUAL PULL STATIONS REQUIRED AT ALL MAIN ENTRANCE/EXIT. THIS INCLUDES: TOP OF STAIRWELLS ETC.
- THE FIRE ACCESS ROAD SHALL BE ESTABLISHED WITH GRAVEL, NO GREATER THAN 1 1/4" OR EQUIVALENT FROM THE START OF COMBUSTIBLE CONSTRUCTION. IN ADDITION, THE FIRE ACCESS ROAD SHALL BE SUBJECT TO INSPECTIONS BY THE FIRE MARSHALL, AT WHICH TIME IF DEEMED NECESSARY, IT MAY BE REQUIRED TO MAINTAIN REASONABLE & SAFE ACCESS.

OVERALL BUILDING PLAN
MEZZANINES
SCALE 1/8"=1'-0"

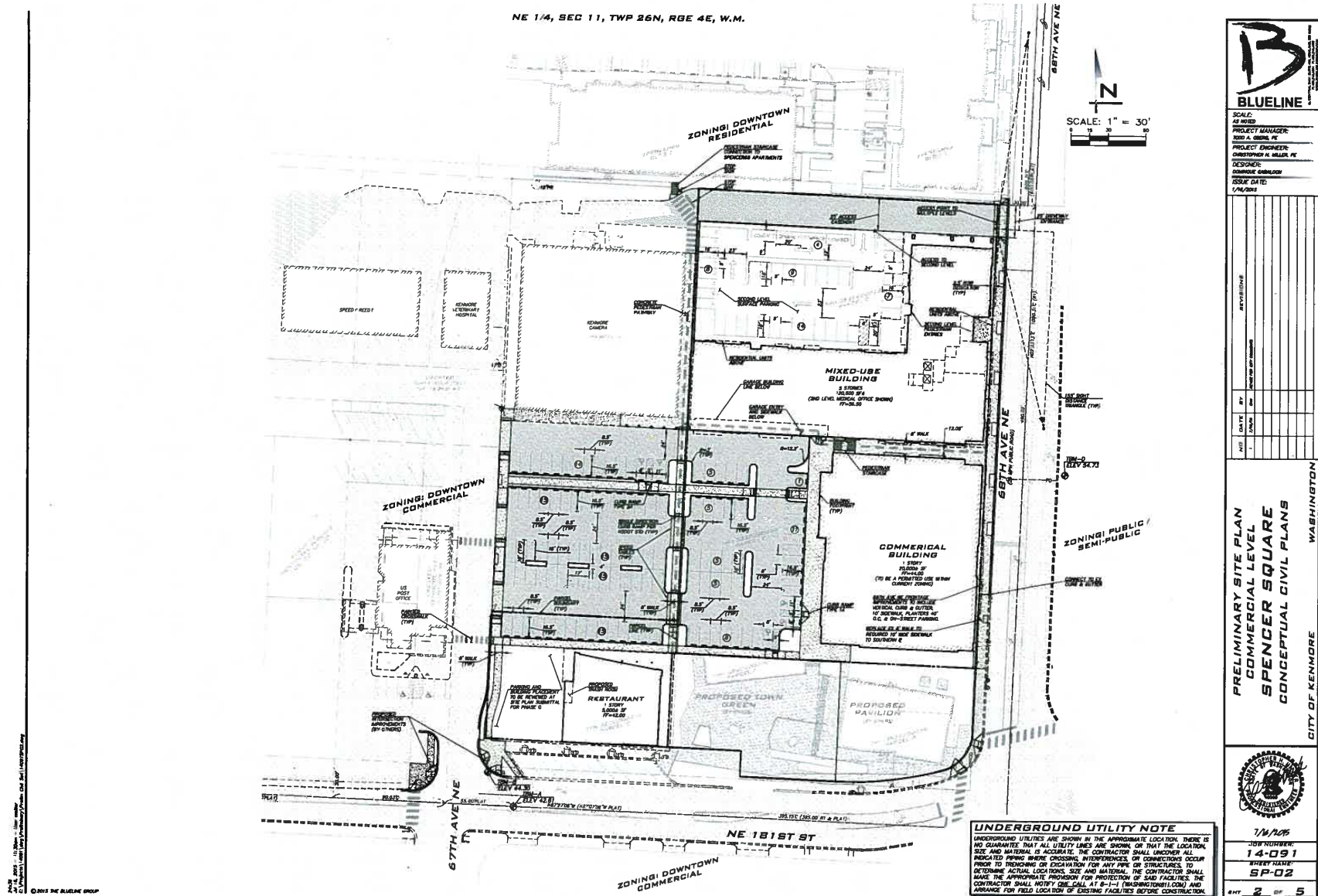
JOB NO. 1130.017 SHEET

JOBN O. 1130.017 SHEET
DRAWN SW/BM

STRAIN SWIM
CHECK SW

DATE 00-00-00 A2

A2.6



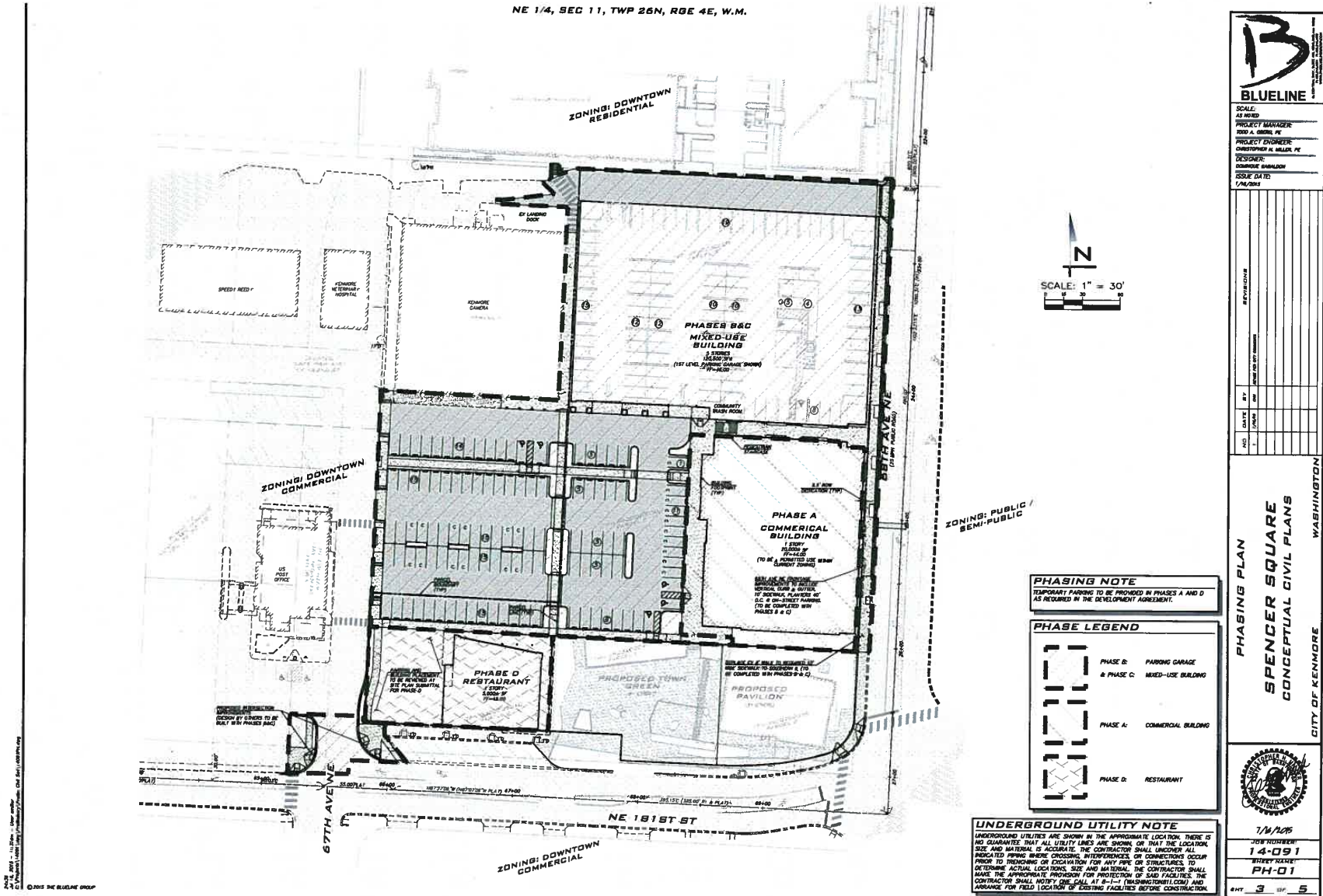






EXHIBIT C
[Certificate of Satisfaction Form]

AFTER RECORDING, PLEASE RETURN TO:

City of Kenmore
Attn: City Manager
P.O. Box 82607
Kenmore, WA 98028

CERTIFICATE OF SATISFACTION

Grantor(s): City of Kenmore, a Washington municipal corporation
Grantee(s): MSPT XI LLC, a Washington limited liability company
Short Legal Description: [insert short legal]
[Complete legal description on Exhibit A]
Assessor's Property Tax Parcel/Account Number(s): [insert]
Reference Number(s) of Document(s) Released: [insert after recording of Memorandum of Development Agreement]

This CERTIFICATE OF SATISFACTION ("Certificate") is issued as of the ____ day of _____, 20__, by the CITY OF KENMORE, a Washington municipal corporation ("City"), to MSPT XI LLC, a Washington limited liability company, and/or its successors and assigns ("Developer"), pursuant to the Development Agreement referenced below.

RECITALS

A. Reference is made to that certain Memorandum of Agreement of Development Agreement By and Between the City of Kenmore and MSPT XI LLC, for the Spencer Square Development entered as of [date], recorded [date] (the "Development Agreement"), under Recording No. [#####] (the "Memorandum"). Capitalized terms used and not defined herein shall have the meanings assigned thereto in the Development Agreement.

B. Simultaneously with its execution of the Development Agreement, the City approved the Site Plan Application for the Project in the form of Exhibit B to the Development Agreement. Phase __ of the Project encompasses the property legally described in attached Exhibit 1 hereto (the "Property").

78782-0020/LEGAL126889929.1

C. This Certificate is being delivered by City in accordance with, and as required by, Section 8.4(a) of the Development Agreement.

NOW THEREFORE, City hereby acknowledges that, as of the date hereof, the City has issued a certificate of occupancy for Phase ___ of the Project and that the City is satisfied that each condition set forth in the Development Agreement relating to the design and construction of such phase has been satisfied. This Certificate of Satisfaction is issued solely for the purposes stated in Section 8.4(a) of the Development Agreement, is issued solely to Developer and not to or for the benefit of any other person, and does not constitute a representation or warranty by the City for any other purpose.

Notwithstanding this Certificate of Satisfaction, Section 14 of the Development Agreement provides for survival of certain covenants as between City and Developer, and nothing in this Certificate of Satisfaction affects such survival.

[Signature Page Follows]

IN WITNESS WHEREOF, City has executed and delivered this Certificate as of the date first set forth above.

CITY OF KENMORE

By: [/form only; not for execution/]

Name: _____

Title: _____

STATE OF WASHINGTON)
) 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/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

Printed: _____

NOTARY PUBLIC in and for Washington

Residing at: _____

My appointment expires: _____

EXHIBIT 1

Legal Description of Phase __

78782-0020/LEGAL126889929.1

EXHIBIT D
[Notice of Termination]

AFTER RECORDING RETURN TO:

City of Kenmore
Attn: City Manager
P.O. Box 82607
Kenmore, WA 98028

**NOTICE OF TERMINATION OF DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF KENMORE AND MSPT XI LLC
FOR THE SPENCER SQUARE DEVELOPMENT**

Grantor(s): City of Kenmore, a Washington municipal corporation
Grantee(s): MSPT XI LLC, a Washington limited liability company
Short Legal Description: [insert short legal]
[Complete legal description on Exhibit A]
Assessor's Property Tax Parcel/Account Number(s): [insert]
Reference Number(s) of Document(s) Released: [insert after recording of Memorandum of Development Agreement]

By Memorandum of Agreement of Development Agreement entered as of [date], recorded [date], under Recording No. [#####] (the "Memorandum"), Grantor and Grantee gave notice of their entry into that certain Development Agreement By and Between the City of Kenmore and MSPT XI LLC, for the Spencer Square Development, dated as of the ____ day of _____, 2015 (the "Development Agreement"), affecting the real property described on Exhibit A hereto (the "Property").

Pursuant to Section 13.3 of the Development Agreement, "[t]his Agreement shall terminate upon the expiration of the term identified in Section 6 or upon issuance of the certificate of occupancy for the final phase of the Project, whichever first occurs. Upon the occurrence of either event identified in the immediately preceding sentence, the City shall record a notice of termination in a form substantially similar to that notice attached as Exhibit E." Grantor and Grantee [or, if and as appropriate, successor/assign] agree that [describe the first occurring event] occurred as of [date]. Accordingly, this

-1-

78782-0020/LEGAL126889872.1

Memorandum of Agreement provides notice of record that the Development Agreement has been fully terminated as of the date hereof. Notwithstanding this notice of termination, Section 14 of the Development Agreement provides for survival of certain covenants as between City and Developer, and nothing in this notice affects such survival. Except as to such surviving terms, the Development Agreement is of no force or effect as to the Property, and no longer encumbers or otherwise affects the Property.

Dated: _____

CITY OF KENMORE,
a Washington municipal corporation

[form only; not for execution]
By: _____
Its: City Manager

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 he signed this
instrument, on oath stated that he was authorized to execute the instrument, and
acknowledged it as the CITY MANAGER of CITY OF KENMORE, a Washington
municipal corporation, to be the free and voluntary act of such entity for the uses and
purposes mentioned in the instrument.

DATED: _____

Print Name: _____

Notary Public in and for the State of
Washington, residing at _____
My commission expires: _____

EXHIBIT A
Legal Description

78782-0020/LEGAL126889872.1

-4-

EXHIBIT E
[Project Renderings]



A1

DAHLIN
group

SITE PLAN

0 16 32 64
NTS

PROJECT DATA

PARKING

GARAGE PARKING 106 SPACES
SURFACE PARKING 42 SPACES

FLOOR AREA

GARAGE	37,836 SF
1ST FLOOR	21,679 SF
COMMERCIAL	19,868 SF
RESIDENTIAL	821 SF
CIRCULATION	990 SF
2ND-4TH FLOOR	23,544 SF
5TH FLOOR	23,072 SF
LOFT FLOOR	2,600 SF
TOTAL AREA	155,819 SF

UNIT TYPE

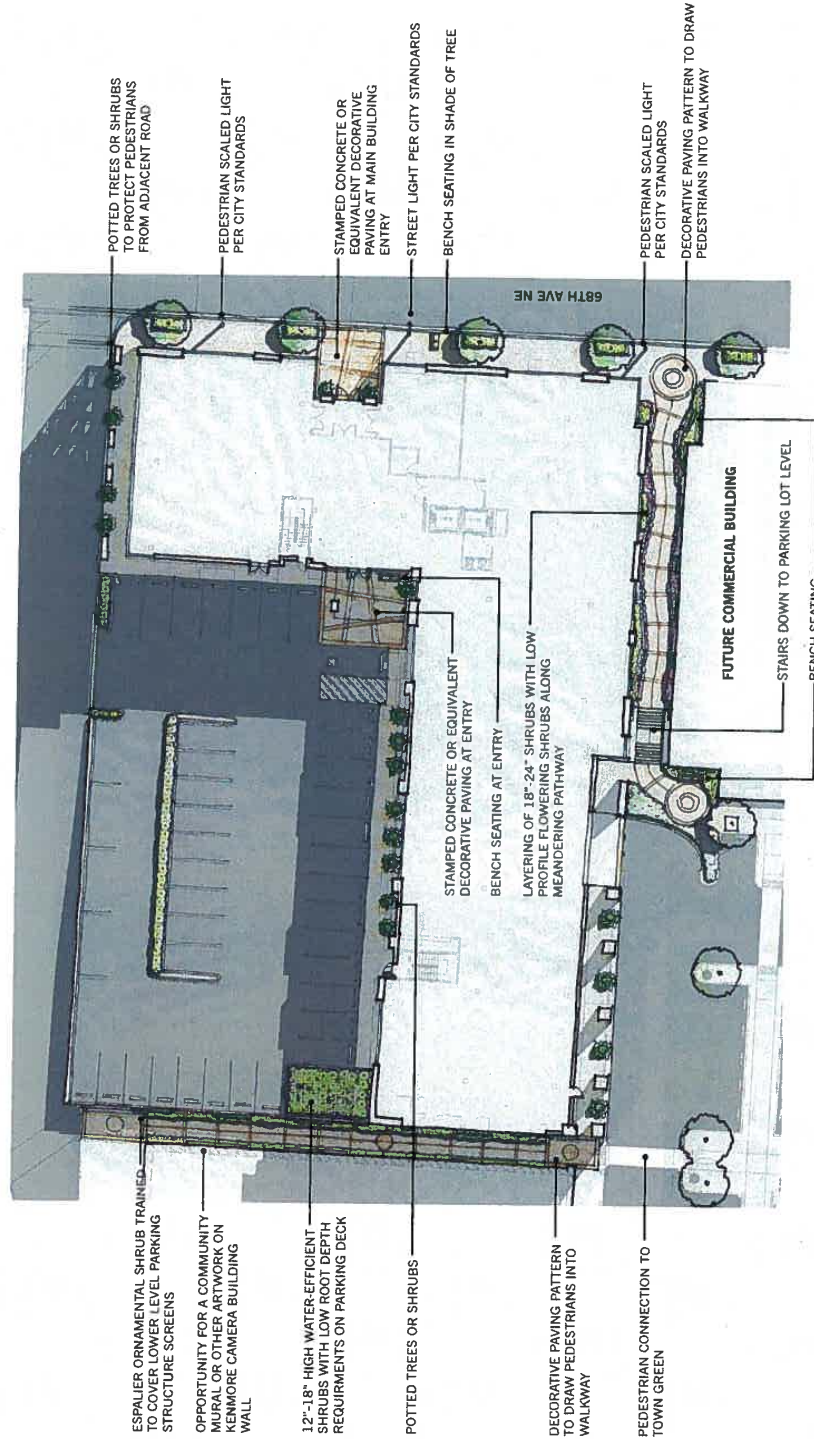
STUDIO	20
ONE BEDROOM	52
TWO BEDROOMS	18
THREE BEDROOMS	4
TOTAL UNITS	94

STREET FRONT FACADE RATIO

COMMERCIAL FRONT FACADE RATIO
= 130.5 FEET / 156 FEET = 83.6%
RESIDENTIAL FRONT FACADE RATIO
= 25.5 FEET / 156 FEET = 16.4%

SPENCER SQUARE
KENMORE, WA | MSPT XI LLC

DAHLIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015



A2

DAHLIN
group

LANDSCAPE PLAN

0 15 30 60
NTS

SPENCER SQUARE
KENMORE, WA | MSPT XI LLC

DAHLIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015



A4

DAHLIN
group

**NORTH/SOUTH
WALKWAY**

NTS

SPENCER SQUARE
KENMORE, WA | MSPT XI LLC

DAHLIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015



WALKABLE STREETS



SPENCER SQUARE

KENMORE, WA | MSPT XI LLC

DAHILIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015

A5
DAHILIN
group
PROJECT VISION



- 1 COMPOSITE SHINGLE ROOFINGS
- 2 SMOOTH WALLBOARD W/ REVEALS
- 3 HORIZONTAL LAP SIDING
- 4 COMPOSITE WINDOWS AND DOORS
- 5 METAL BALCONY
- 6 ARCHITECTURAL SCREEN
- 7 STOREFRONT WINDOW/DOOR ASSEMBLY
- 8 MIXED STAINED SIDING
- A LARGE ROUND PLANTER POTS
- B STREET TREES
- C POTTED PLANTS
- D WOOD GRAIN PORCELAIN PAVER

A6
DAHILIN
group
PROJECT VISION

WALKABLE STREETS

SPENCER SQUARE
KENMORE, WA | MSPT XI LLC

DAHILIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015



SPENCER SQUARE
KENMORE, WA | MSPT XI LLC

A7
DAHLIN
group
NORTH EAST VIEW

DAHLIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015



A8
DAHLIN
group
SOUTH EAST VIEW

SPENCER SQUARE
KENMORE, WA | MSPT XI LLC

DAHLIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015



A9
DAHLIN
group
SOUTH WEST VIEW

SPENCER SQUARE
KENMORE, WA | MSPT XI LLC

DAHLIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015



SPENCER SQUARE
KENMORE, WA | MSPT XI LLC

DAHLIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015

A10
DAHLIN
group
FRONT ENTRY VIEW



68TH STREET ELEVATION

SPENCER SQUARE
KENMORE, WA | MSPT XI LLC

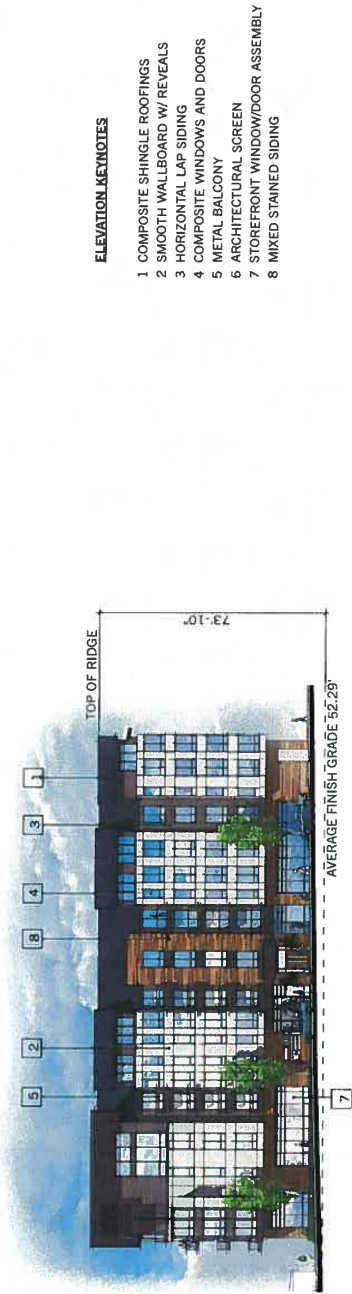
DAHLIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015

DAHLIN
group

A11

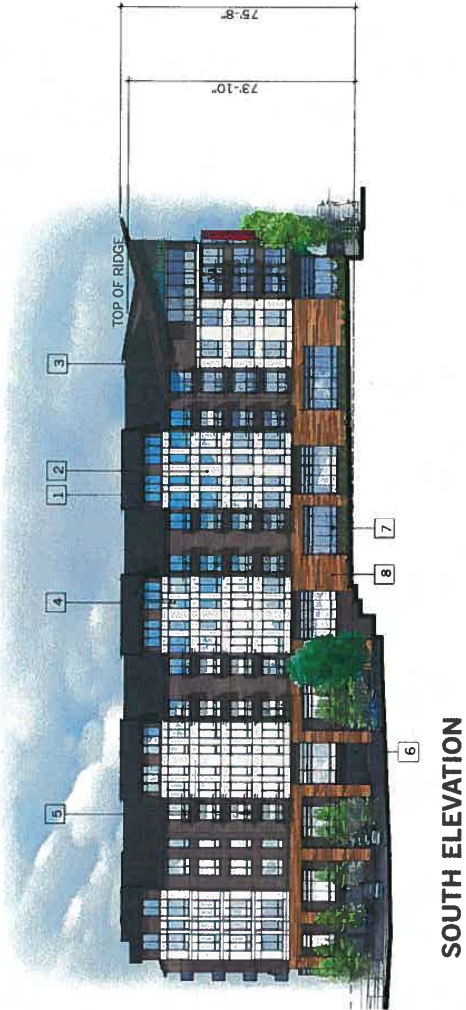
STREESCAPE

0 16 32 64
1/16" = 1'-0" SCALE



ELEVATION KEYNOTES

- 1 COMPOSITE SHINGLE ROOFINGS
- 2 SMOOTH WALLBOARD W/ REVEALS
- 3 HORIZONTAL LAP SIDING
- 4 COMPOSITE WINDOWS AND DOORS
- 5 METAL BALCONY
- 6 ARCHITECTURAL SCREEN
- 7 STOREFRONT WINDOW/DOOR ASSEMBLY
- 8 MIXED STAINED SIDING



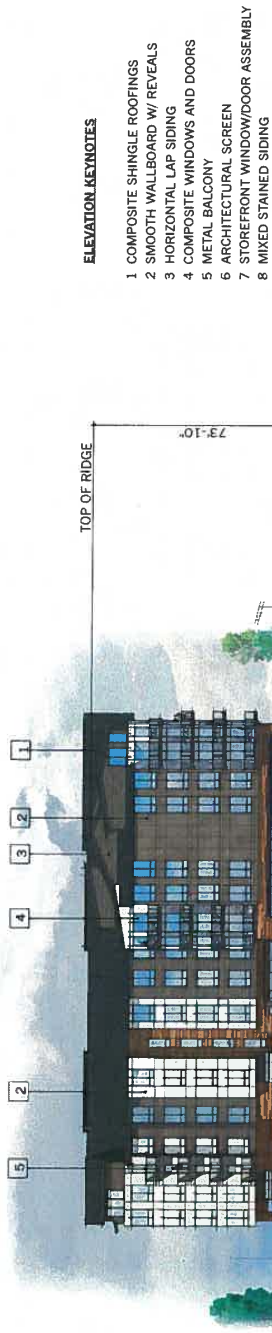
SPENCER SQUARE
KENMORE, WA | MSPT XI LLC

DAHILIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015

DAHILIN group
ELEVATIONS

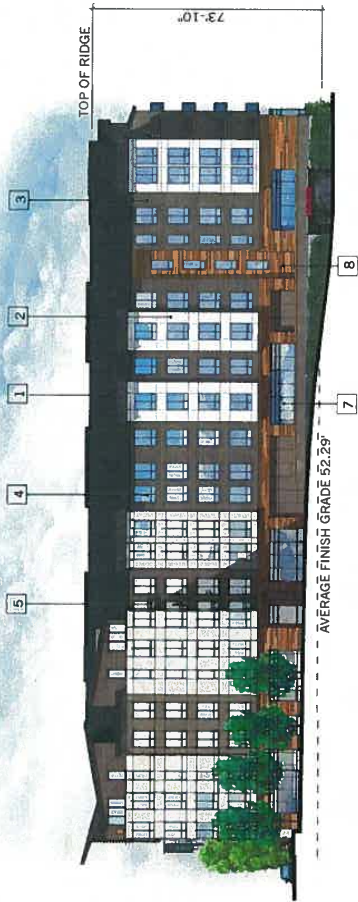
A12

0 16 32 64
1/16" = 1'-0" SCALE



ELEVATION KEYNOTES

- 1 COMPOSITE SHINGLE ROOFINGS
- 2 SMOOTH WALLBOARD W/ REVEALS
- 3 HORIZONTAL LAP SIDING
- 4 COMPOSITE WINDOWS AND DOORS
- 5 METAL BALCONY
- 6 ARCHITECTURAL SCREEN
- 7 STOREFRONT WINDOW/DOOR ASSEMBLY
- 8 MIXED STAINED SIDING



DAHILIN

group

ELEVATIONS

0

16

32

64

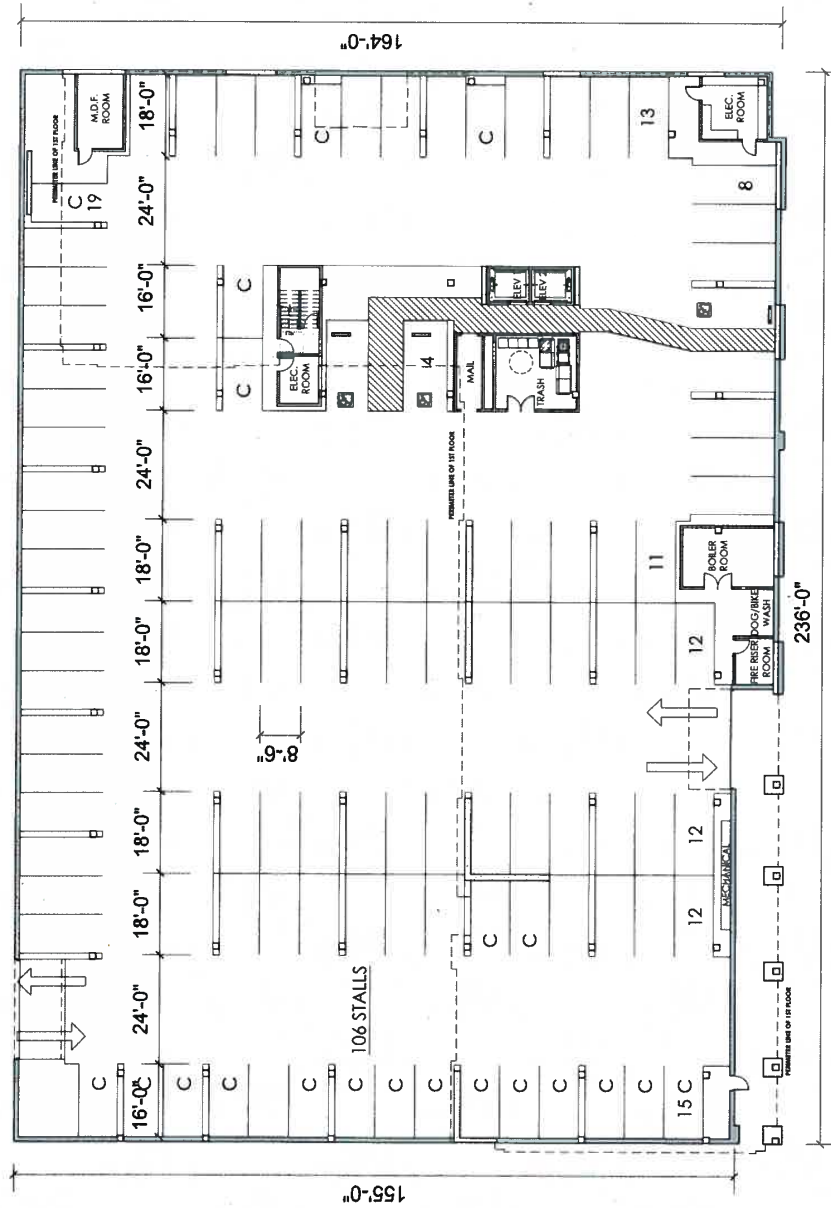
1/16"=1'-0" SCALE

A13

SPENCER SQUARE

KENMORE, WA | MSPT XI LLC

DAHILIN GROUP ARCHITECTURE | PLANNING | 11.30.017 | JULY 2015



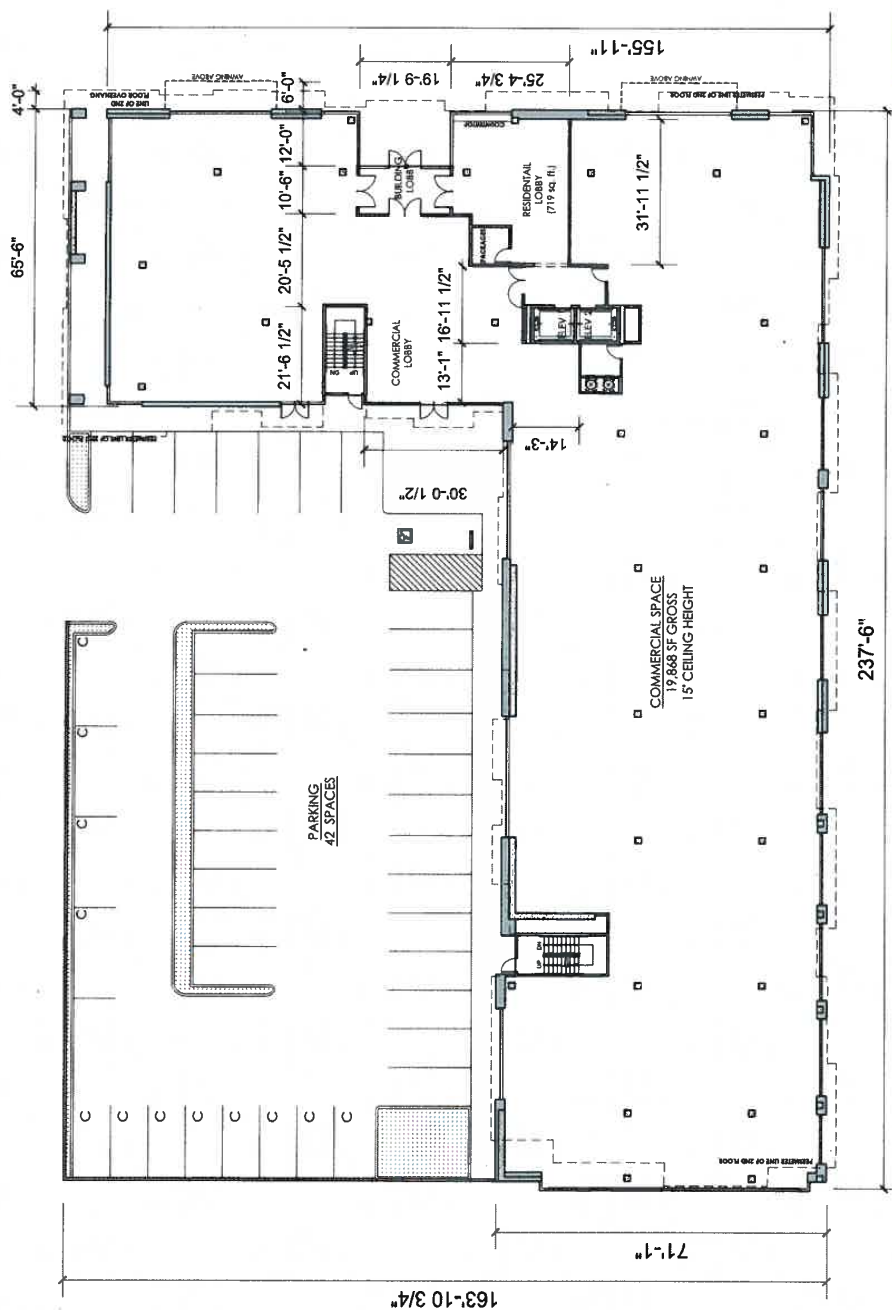
SPENCER SQUARE
KENMORE, WA | MSPT XI LLC

A14
DAHILIN group
BUILDING GARAGE PLAN

3/32" = 1'-0" SCALE

DAHILIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015

0 32/3 64/3 128/3



A15

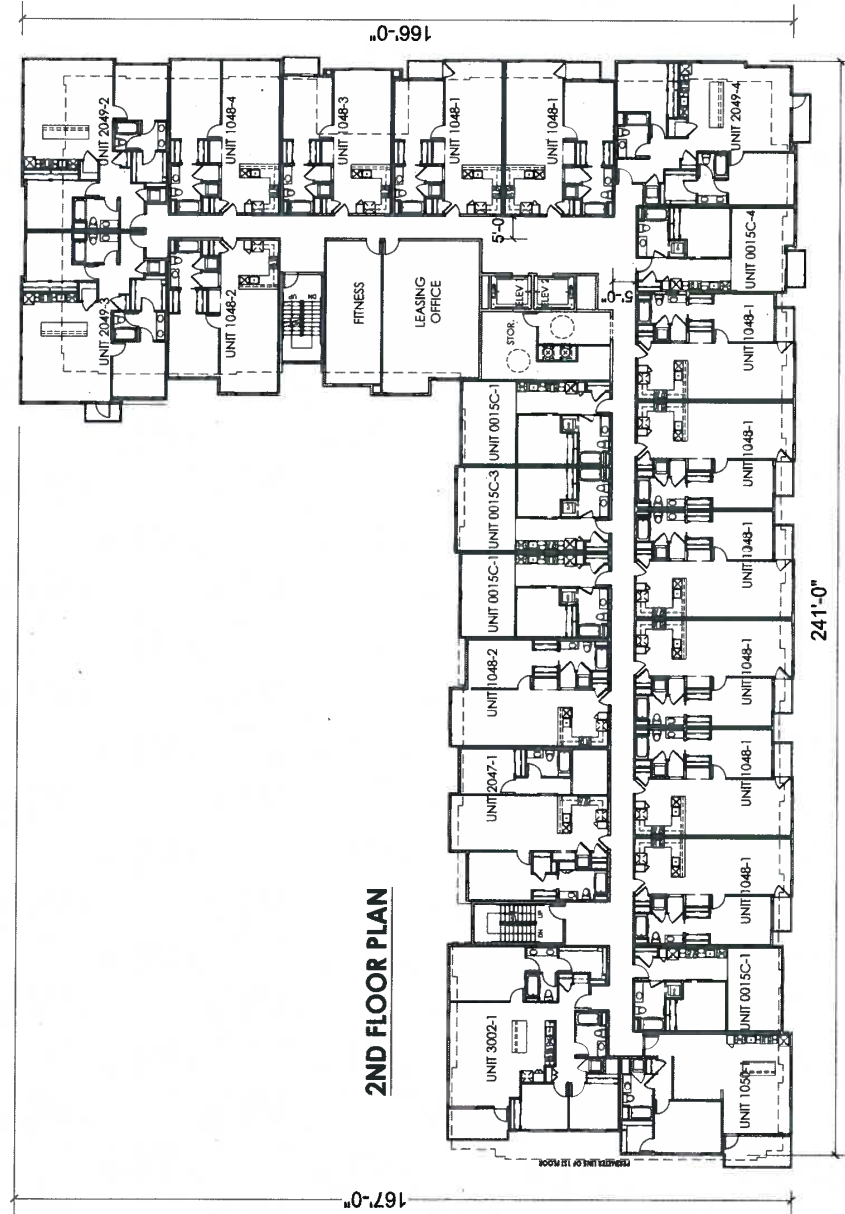
DAHLIN group

BUILDING 1ST FLOOR

0 32/3 64/3 128/3
3/32" = 1'-0" SCALE

SPENCER SQUARE
KENMORE, WA | MSPT XI LLC

DAHLIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015



A16

DAHILIN group

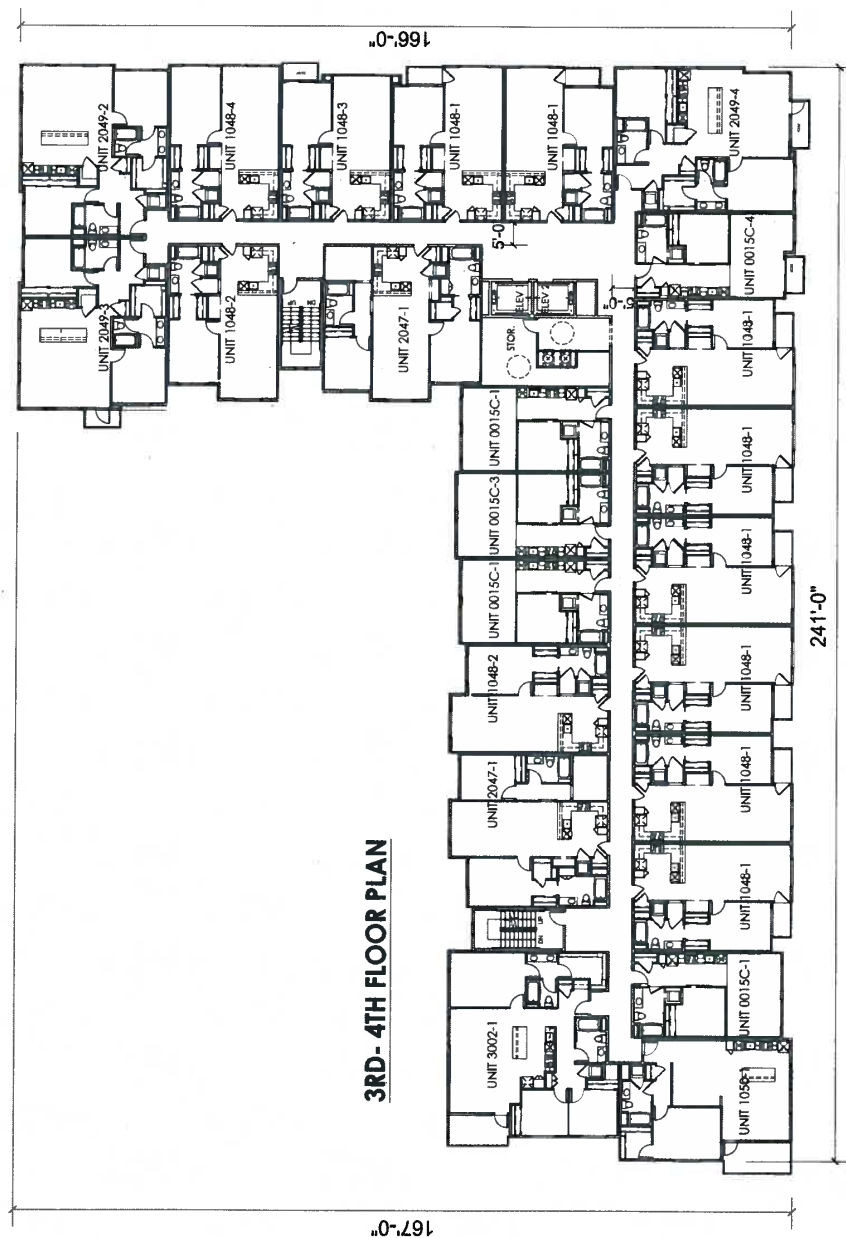
BUILDING 2ND FLOOR

3/32" = 1'-0" SCALE

0 32/3 64/3 128/3

SPENCER SQUARE
KENMORE, WA | MSPT XI LLC

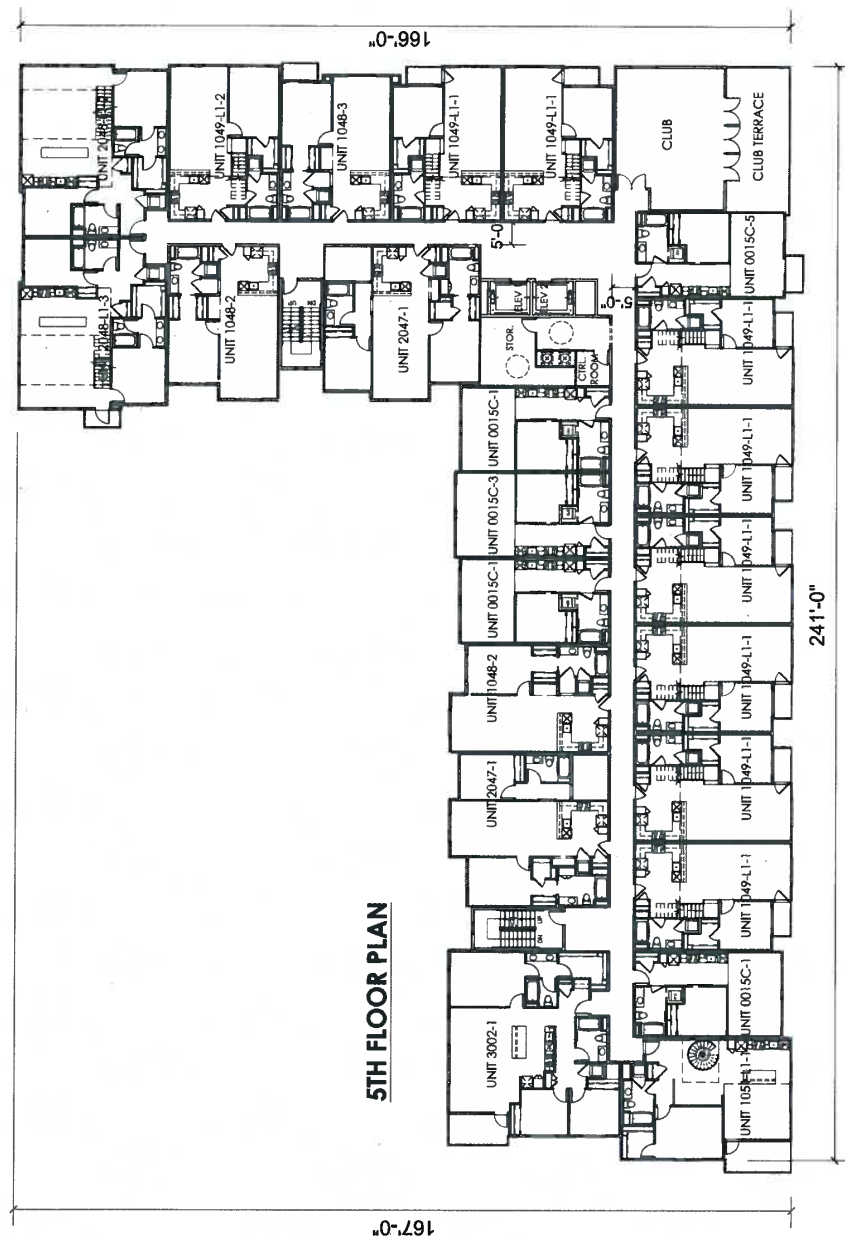
DAHILIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015



A17
DAHLIN group
BUILDING 3RD/4TH FLR.
0 32/3 64/3 128/3
3/32" = 1'-0" SCALE
N

SPENCER SQUARE
KENMORE, WA | MSPT XI LLC

DAHLIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015



A18

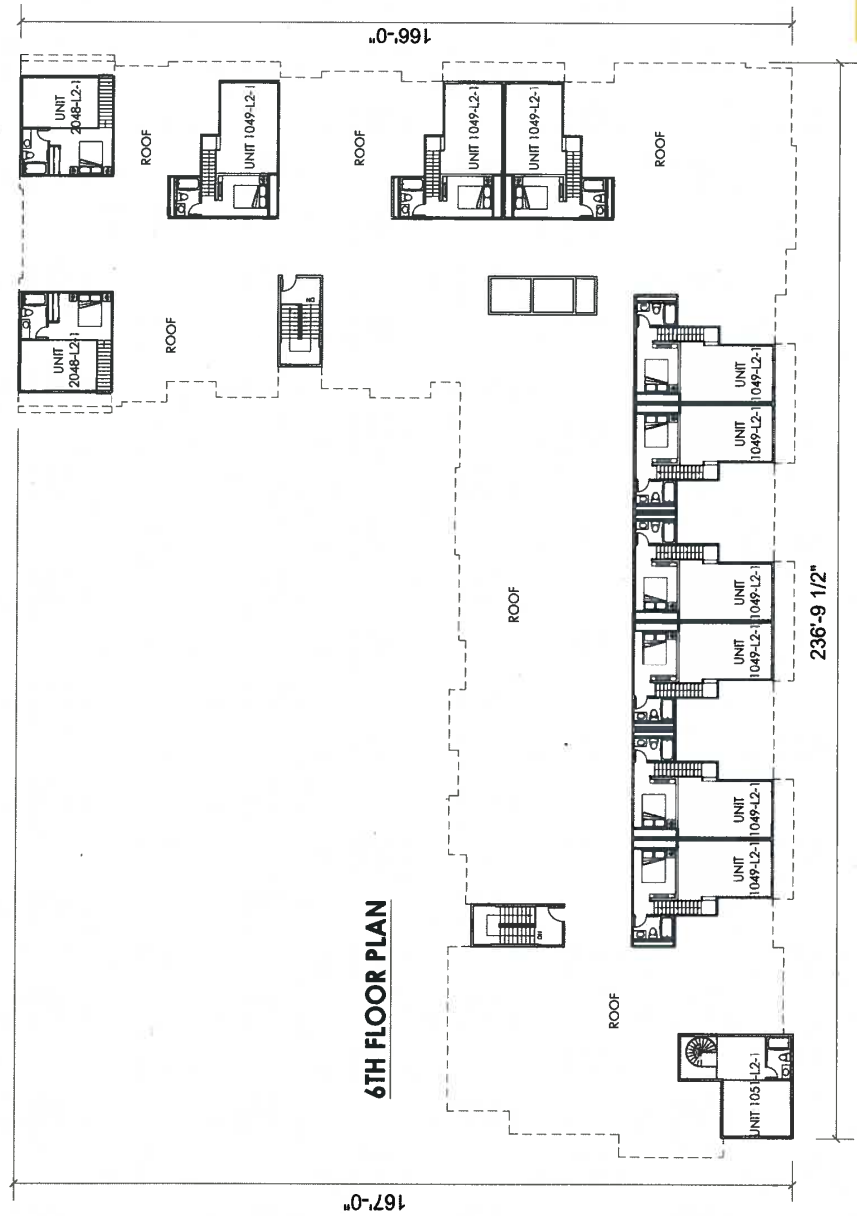
DAHLIN group

BUILDING 5TH FLOOR

0 32/3 64/3 128/3
3/32" = 1'-0" SCALE

SPENCER SQUARE
KENMORE, WA | MSPT XI LLC

DAHLIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015



6TH FLOOR PLAN

DAHLLIN group

LOFT LEVEL

A19

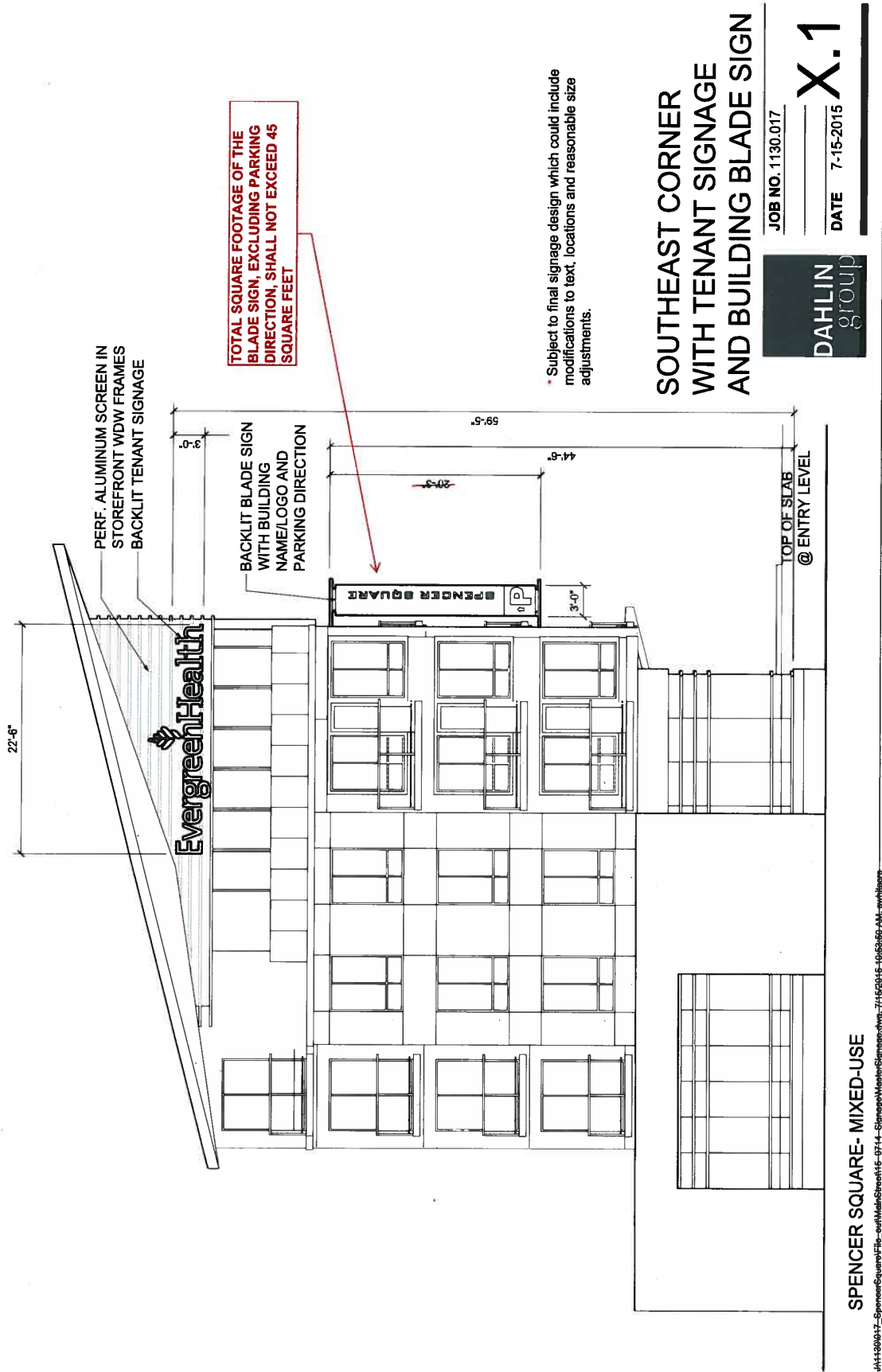
3/32" = 1'-0" SCALE

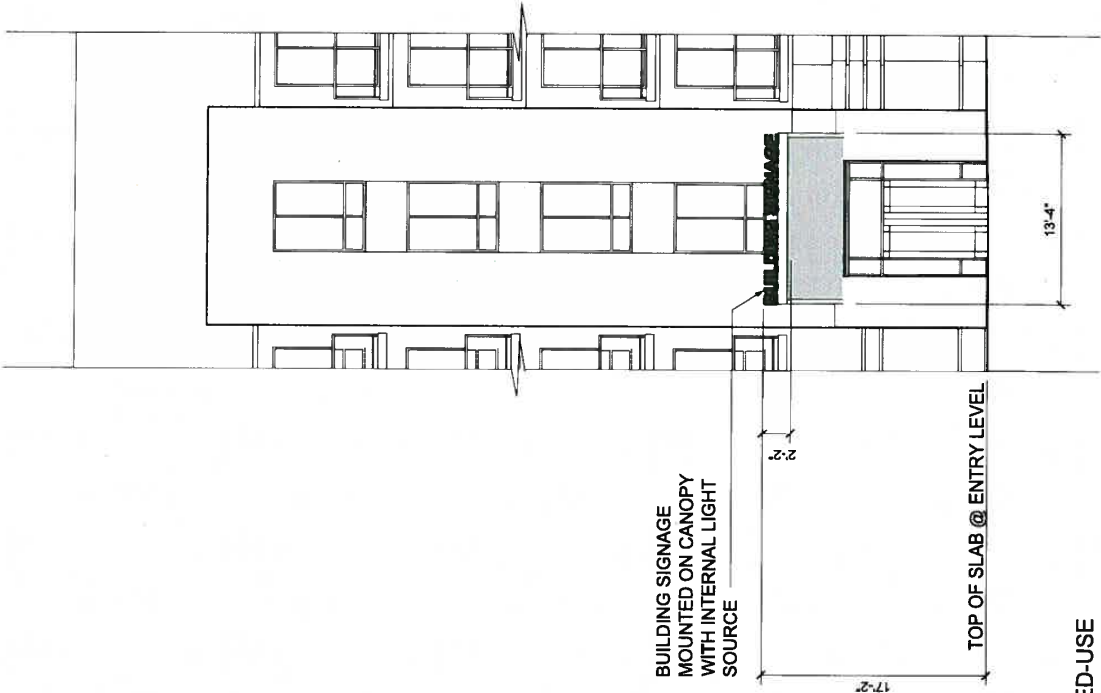
SPENCER SQUARE

KENMORE, WA | MSPT XI LLC

DAHLLIN GROUP ARCHITECTURE | PLANNING | 1130.017 | JULY 2015

EXHIBIT F
[Signs]





SPENCER SQUARE- MIXED-USE

J:\1130017_SpencerSquare\File_out\MainStreet\15_0714_Signage\MasterSignage.dwg, 7/15/2015 11:37:29 AM, swilacra

* Subject to final signage design which could include modifications to text, locations and reasonable size adjustments.

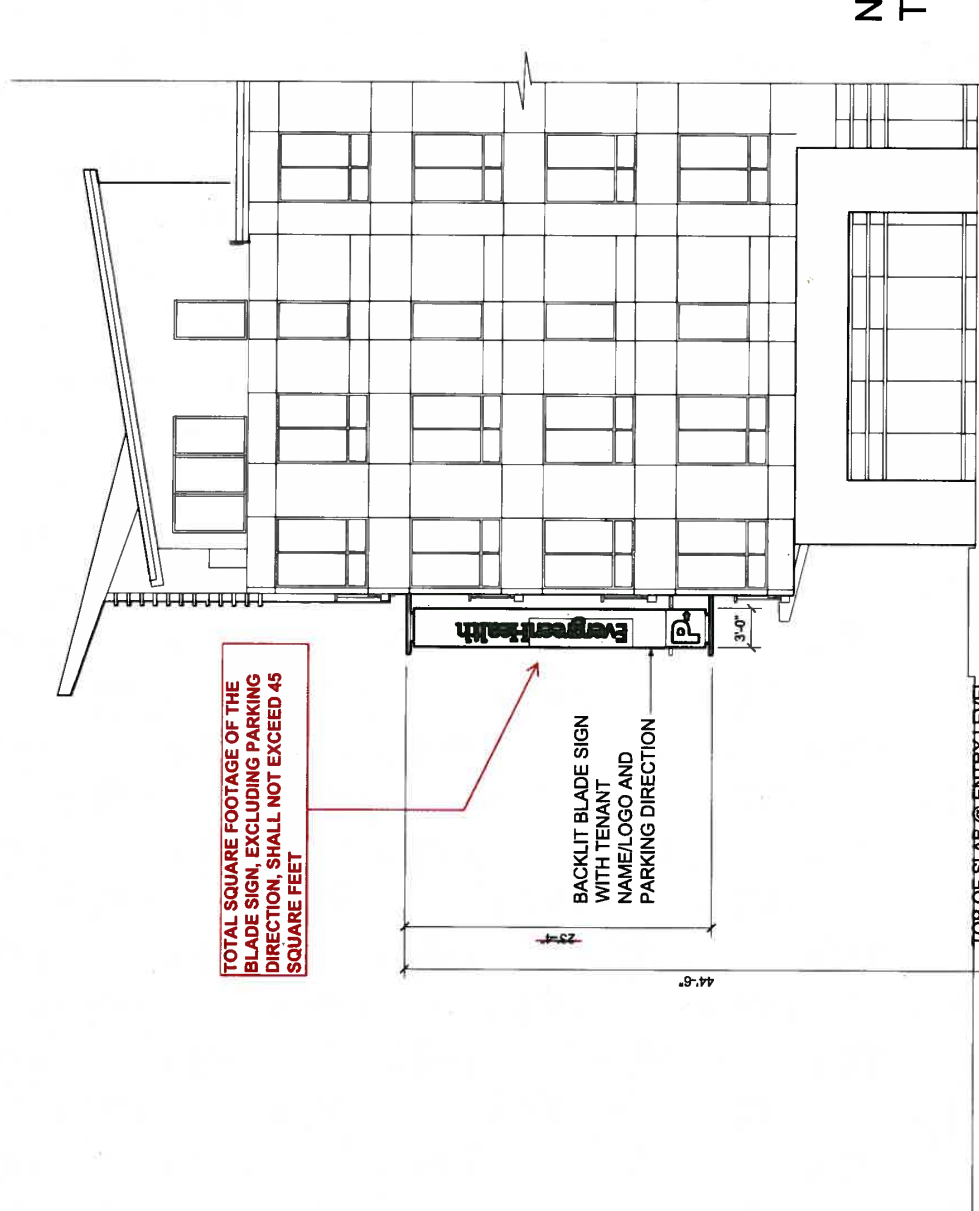
BUILDING ENTRY CANOPY
SIGNAGE OFF 68TH STREET

JOB NO. 1130.017

X.2

DATE 7-15-2015





• Subject to final signage design which could include modifications to text, locations and reasonable size adjustments.

NORTHEAST CORNER WITH TENANT BLADE SIGN

JOB NO. 1130.017

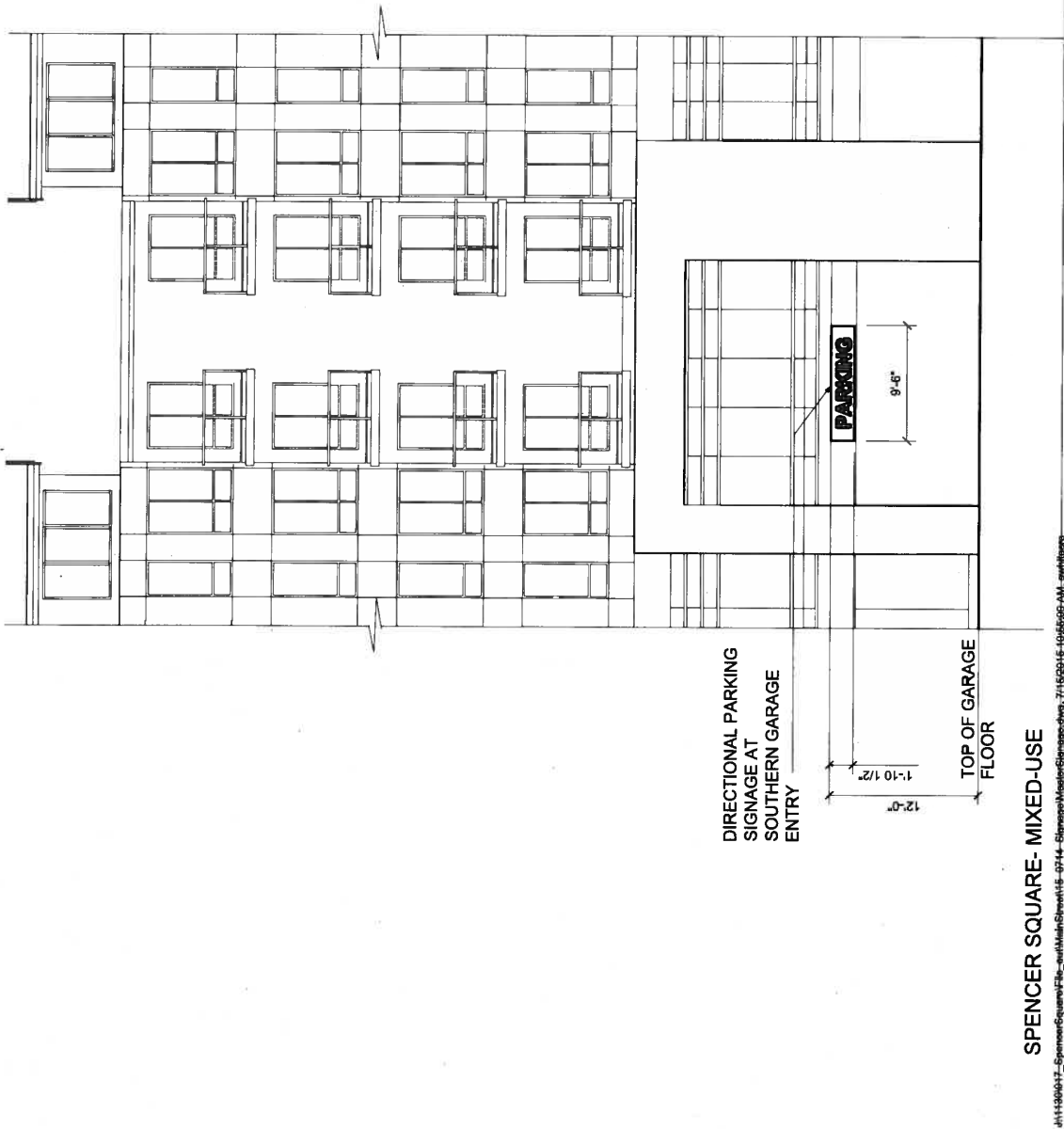
X.3

DATE 7-15-2015



SPENCER SQUARE- MIXED-USE

d:\1130047_SpencerSquare\1130047-014_SignageMasterSignage.dwg, 7/15/2015 10:54:40 AM, ewh@dhc.com



* Subject to final signage design which could include modifications to text, locations and reasonable size adjustments.

**SOUTHERN PARKING
ENTRANCE**

JOB NO. 1130.017

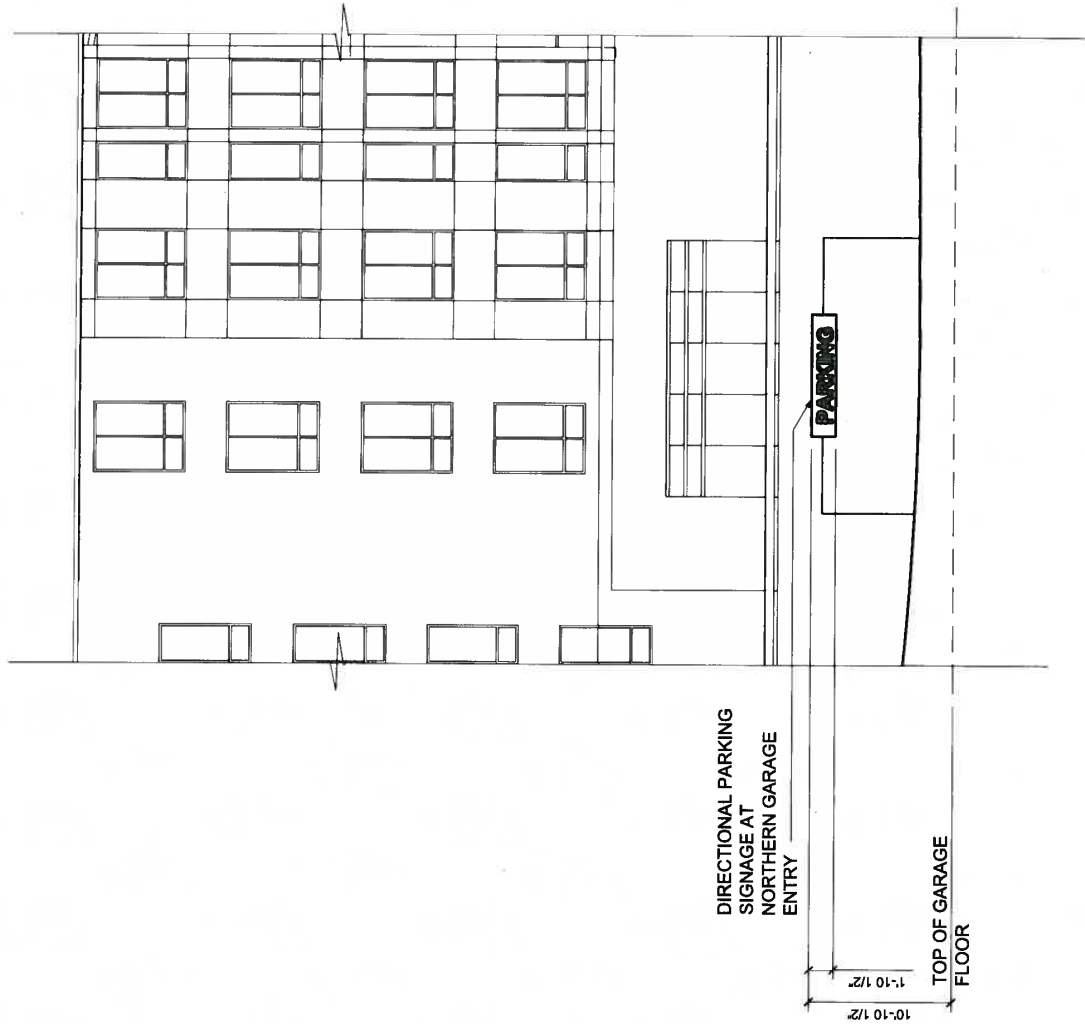
X.4

DATE 7-15-2015



SPENCER SQUARE- MIXED-USE

J:\1130017_SpencerSquare\Facade\MainSheet12_0714_SignageMasterSignage.dwg, 7/15/2015 10:46:00 AM, swhillson



• Subject to final signage design which could include modifications to text, locations and reasonable size adjustments.

NORTHERN PARKING ENTRANCE

JOB NO. 1130.017

X.5

DATE 7-15-2015



SPENCER SQUARE- MIXED-USE

J:\1130017_SpencerSquare\1130017_SpencerSquare.dwg, 7/15/2015 10:55:46 AM, swhill

EXHIBIT G
[NE 182nd ST and 67th Ave NE Improvements]

EXHIBIT G

NOT FOR CONSTRUCTION
NOT TO SCALE

**DRAFT - FINAL PLAN TO BE
FINALIZED BY CITY'S ENGINEER TO
CITY'S SPECIFICATIONS**

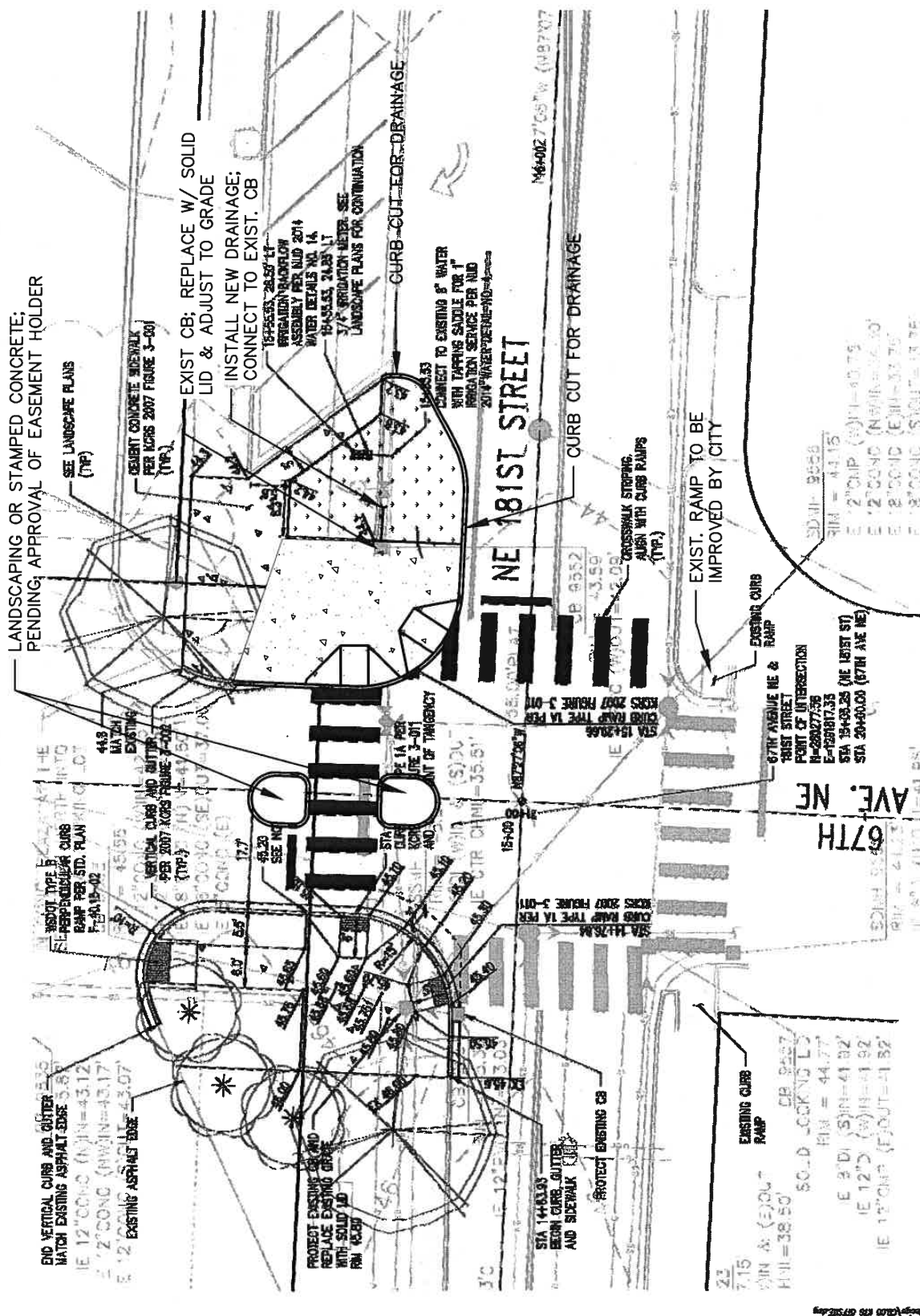


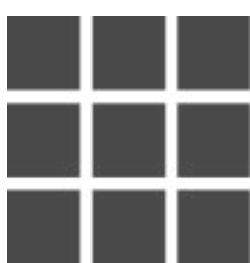
EXHIBIT H
[Expedited Building Permit Review and Submittal Time Periods]

EXHIBIT H**Expedited Review Times****Phase B/C Mixed Use Building**

Permit Type	Submittal Date	Kenmore 1st Review Date	MSPG Response Time and Resubmittal	Kenmore 2nd Review/ Permit Issuance
Demolition	Complete	N/A	N/A	8/17/2015
Grading/Engineering	Complete	Complete	Complete	8/17/2015
Foundation Permit	Approx 9/16/15	2 Weeks	1 Week	1 Week
Building Permit	Approx 10/21/15	3 Weeks	2 Weeks	2 Weeks



KENMORE, WASHINGTON
KENMORE SOUTHERN PHASE



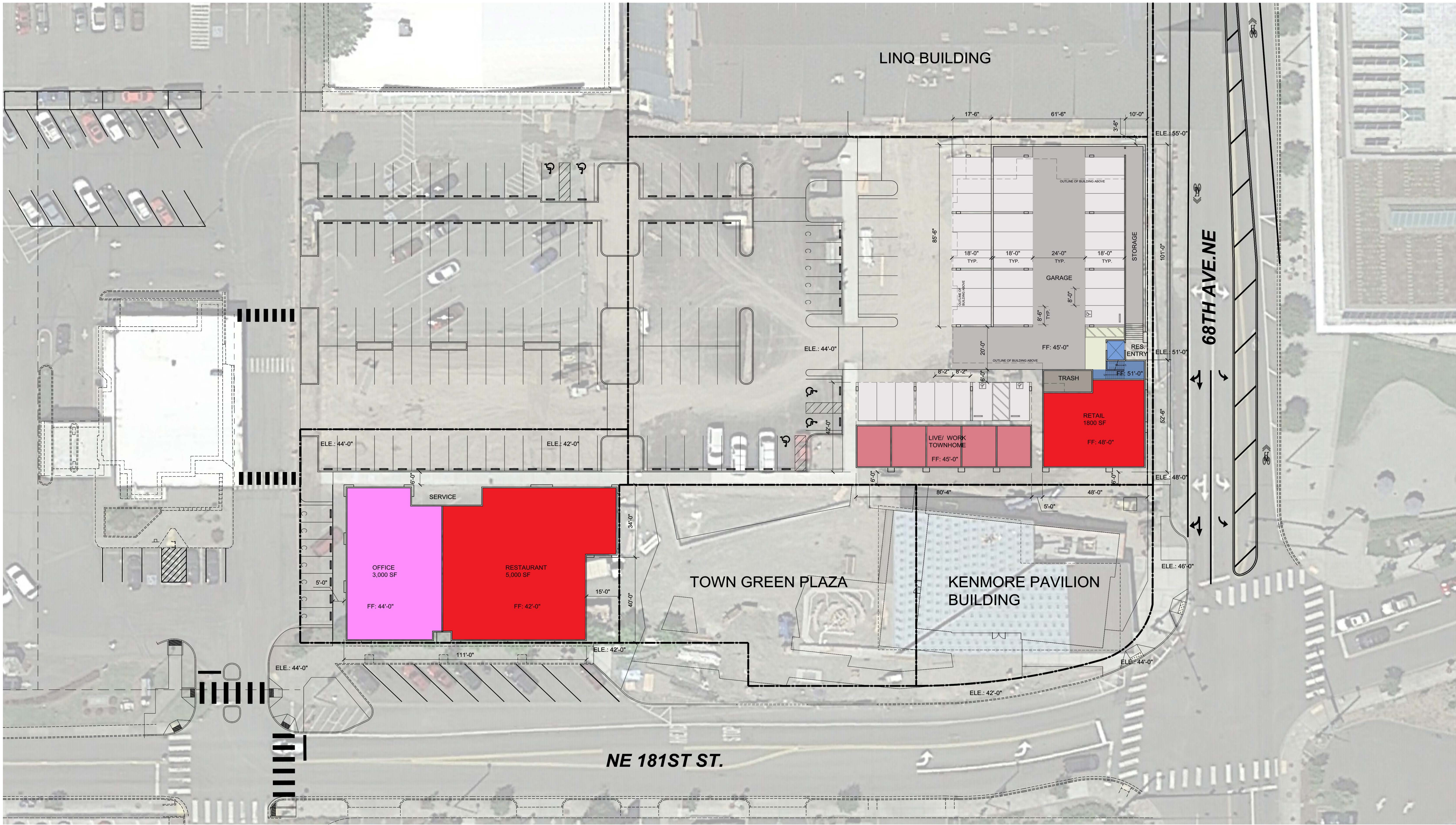
MAINSTREET
PROPERTY GROUP LLC SM



DAHLIN
group

JOB NO. 1130.018
DATE 04-14-17
10900 NE 8th Street,
Suite 1120
Bellevue, WA 98004

A.1



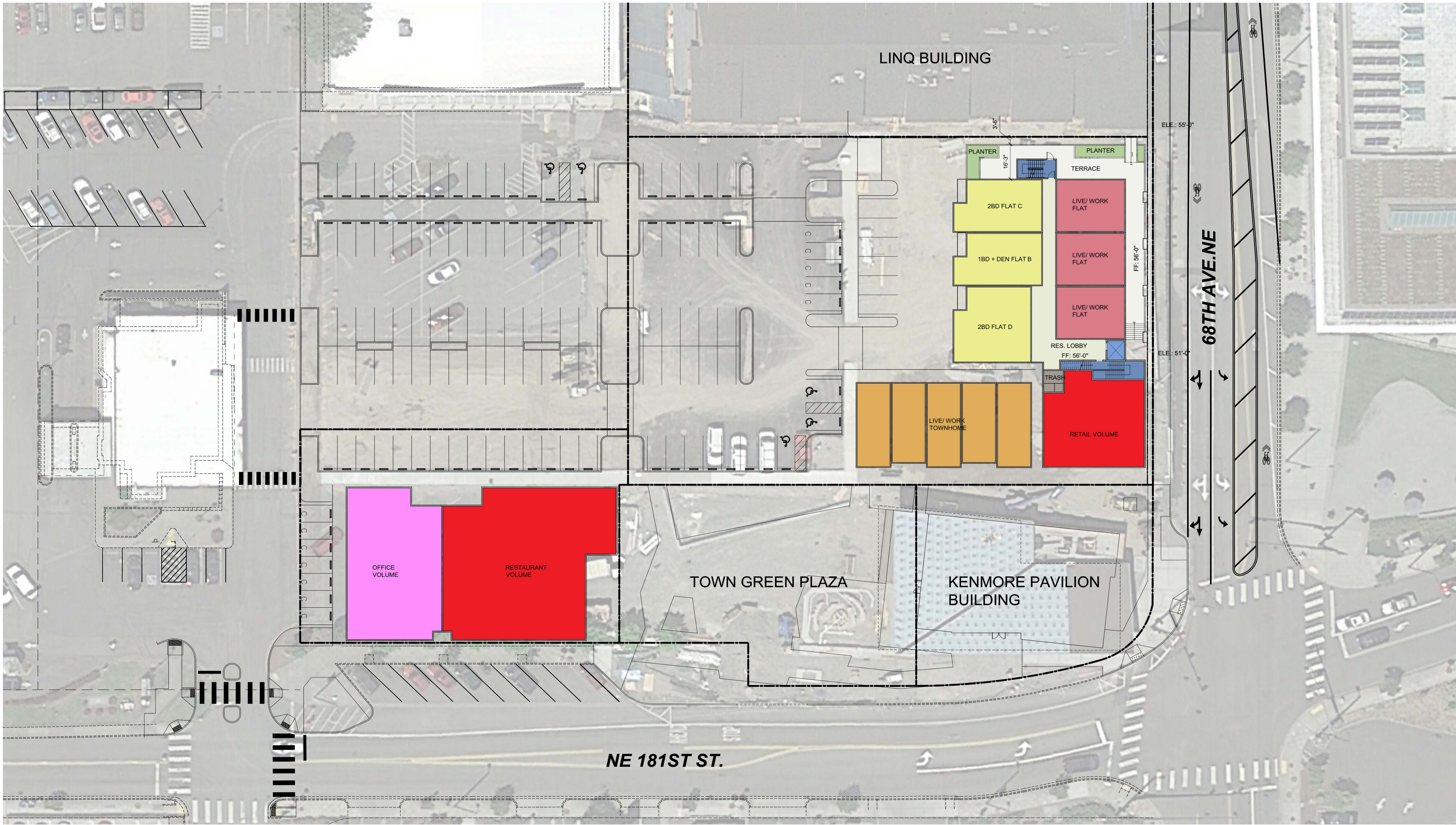
SITE PLAN - LEVEL 1

KENMORE, WASHINGTON
KENMORE SOUTHERN PHASE



JOB NO. 1130.018
DATE 04-14-17
10900 NE 8th Street,
Suite 1120
Bellevue, WA 98004





SITE PLAN - LEVEL 2

KENMORE, WASHINGTON
KENMORE SOUTHERN PHASE



JOB NO. 1130.018
DATE 04-14-17
10900 NE 8th Street,
Suite 1120
Bellevue, WA 98004





SITE PLAN - LEVEL 3

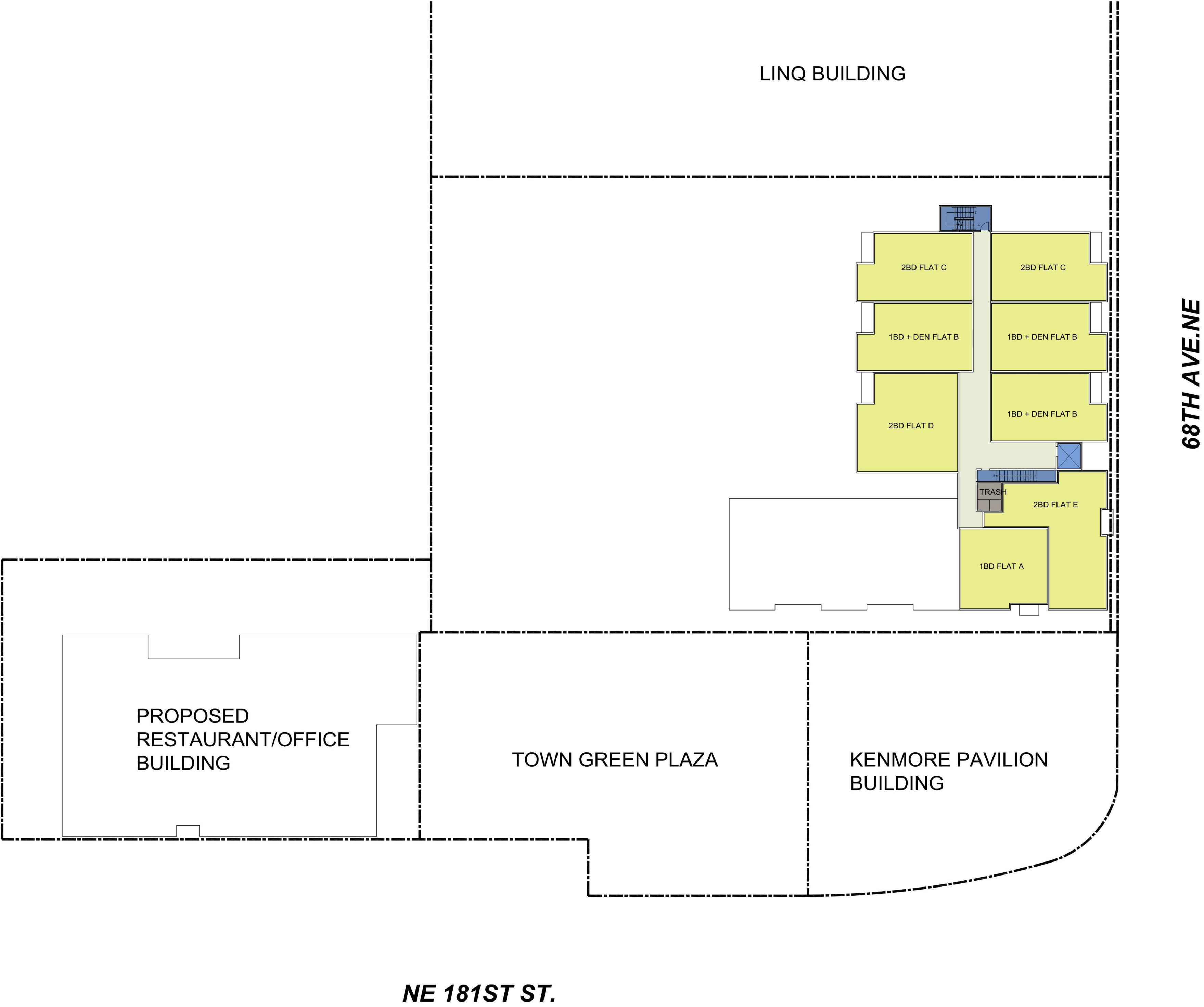
KENMORE, WASHINGTON

KENMORE SOUTHERN PHASE



JOB NO. 1130.018
DATE 04-14-17
10900 NE 8th Street,
Suite 1120
Bellevue, WA 98004





SITE PLAN - LEVEL 4

KENMORE, WASHINGTON

KENMORE SOUTHERN PHASE



JOB NO. 1130.018
DATE 04-14-17
10900 NE 8th Street,
Suite 1120
Bellevue, WA 98004

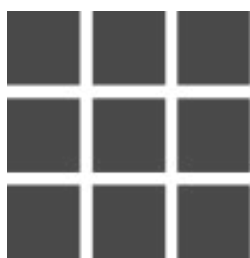




KEY MAP

KENMORE, WASHINGTON
KENMORE SOUTHERN PHASE

PERSPECTIVE VIEW



MAINSTREET
PROPERTY GROUP LLC SM



DAHLIN
group

JOB NO. 1130.018
DATE 04-14-17
10900 NE 8th Street,
Suite 1120
Bellevue, WA 98004

A.6



KEY MAP

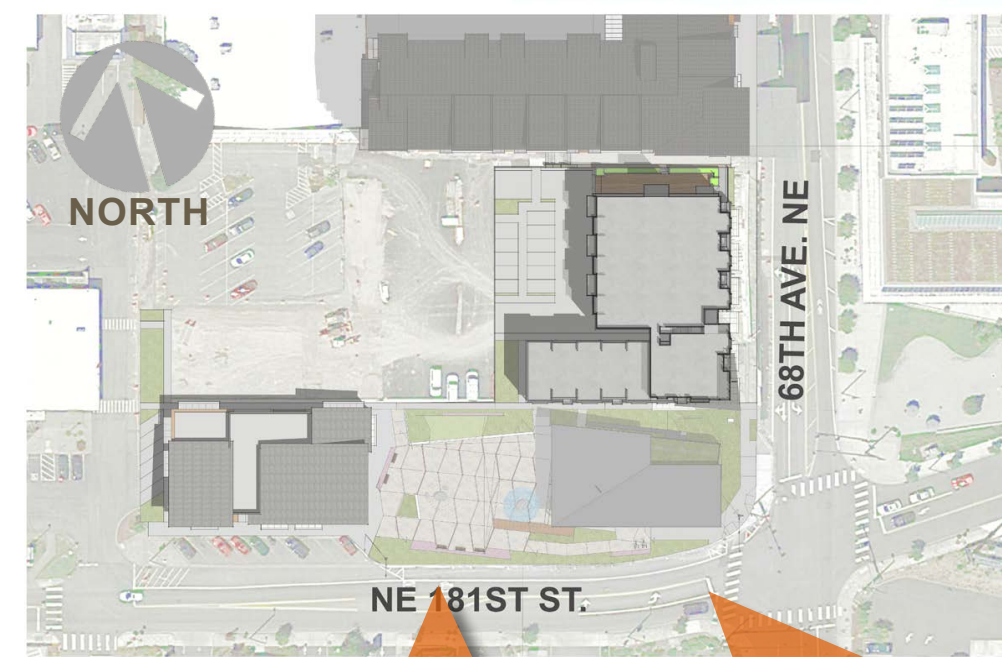
KENMORE, WASHINGTON
KENMORE SOUTHERN PHASE

PERSPECTIVE VIEW



JOB NO. 1130.018
DATE 04-14-17
10900 NE 8th Street,
Suite 1120
Bellevue, WA 98004

A.7

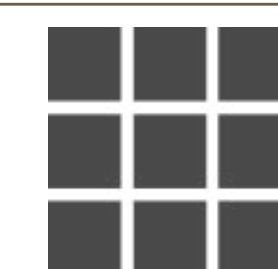


KEY MAP



PERSPECTIVE VIEW

KENMORE, WASHINGTON
KENMORE SOUTHERN PHASE



MAINSTREET
PROPERTY GROUP LLC SM



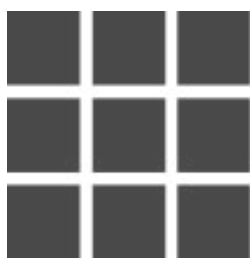
JOB NO. 1130.018
DATE 04-14-17
10900 NE 8th Street,
Suite 1120
Bellevue, WA 98004

A.8



PERSPECTIVE VIEW

KENMORE, WASHINGTON
KENMORE SOUTHERN PHASE



MAINSTREET
PROPERTY GROUP LLC SM



JOB NO. 1130.018
DATE 04-14-17
10900 NE 8th Street,
Suite 1120
Bellevue, WA 98004

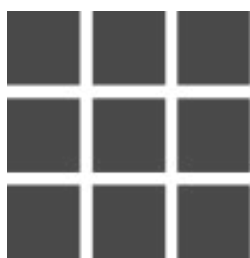
A.9



KEY MAP

PERSPECTIVE VIEW

KENMORE, WASHINGTON
KENMORE SOUTHERN PHASE



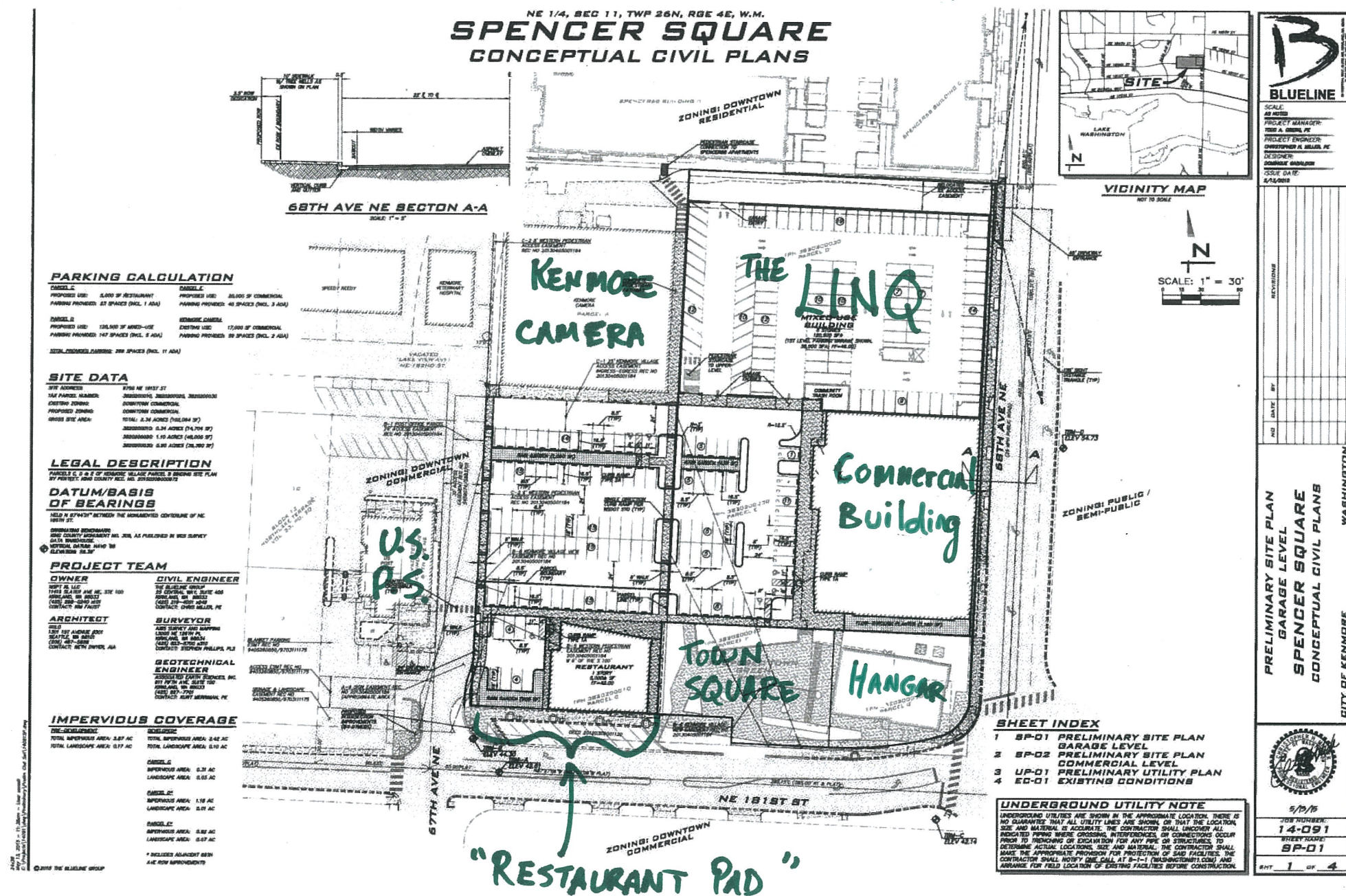
MAINSTREET
PROPERTY GROUP LLC SM



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DATE 04-14-17
10900 NE 8th Street,
Suite 1120
Bellevue, WA 98004

A.10

[illegible]

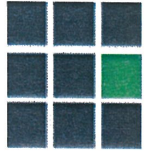


Copy of presentation



Spencer Square THE NEXT PHASE May 1, 2017





PRESENTATION OVERVIEW

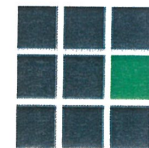
- PROJECT HISTORY
- NEXT PHASE
 - SITE PLAN
 - PART 1 – RESTAURANT/OFFICE
 - PART 2 – 68th TOWNHOMES + RETAIL
- DEVELOPMENT AGREEMENT COMPARISON

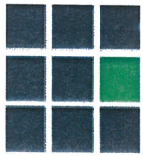
CREATING KENMORE'S DOWNTOWN BULLSEYE

Both the City and MainStreet have responded to the community's vision for a sense of place in Kenmore's downtown core. Spencer Square at Kenmore Village is becoming a walkable place where Kenmore residents can enjoy their community in an emerging urban environment.

The proposed next phase of Spencer Square further enhances the vision by adding:

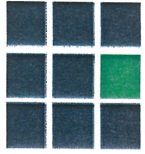
- Vibrant restaurant activating the Town Green
- Office space for new businesses
- Added signature corner retail
- New residents to the community





RECAP OF PROGRESS
The Spencer 68 – Phase I and II
197 Residential Units



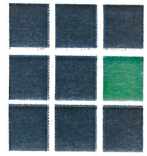


RECAP OF PROGRESS

The Spencer 68 – Phase III

Under Construction 25 Residential Units





RECAP OF PROGRESS

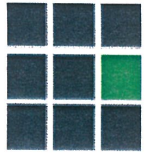
The LINQ Lofts + Flats

94 Residential Units & 20,000 SF Medical



EvergreenHealth





MAINSTREET & THE CITY'S SHARED SUCCESS

- More than \$100 million invested by MainStreet
- Addition of 316 New Residential Units and more than 500 new Kenmore residents
- Construction of 31 new parallel parking stalls on 68th
- Enhanced pedestrian safety via new sidewalks and connection points
- Governor's Smart Communities Award
- New parking lot with high design elements
- All projects started and completed on time



SPENCER SQUARE: NEXT PHASE – 2 PARTS

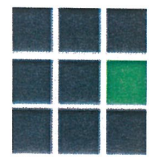




SPENCER SQUARE: Part 1 Townhomes and Retail



Part I – Project Stats:
3 Commercial/
Residential Spaces
24 Residential Units
1,850 SF Retail
218 Parking Stalls



Spencer Square Part 1: Townhomes + Retail Design Inspiration

BOLD YET INVITING ARCHITECTURE
CONNECTIVITY
STREETSCAPE
WALKABILITY

SOCIALLY CONNECTED
CONVENIENCE
ECONOMIC BENEFITS
PROMOTES A HEALTHY COMMUNITY



San Francisco, CA



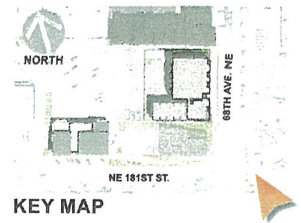
Bothell, WA



Redmond, WA



Portland, OR



KENMORE, WASHINGTON

PERSPECTIVE VIEW



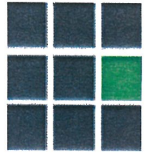
KENMORE, WASHINGTON



PERSPECTIVE VIEW

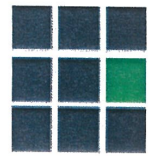


KEY MAP



Spencer Square Part 2: Sit Down Restaurant & Office

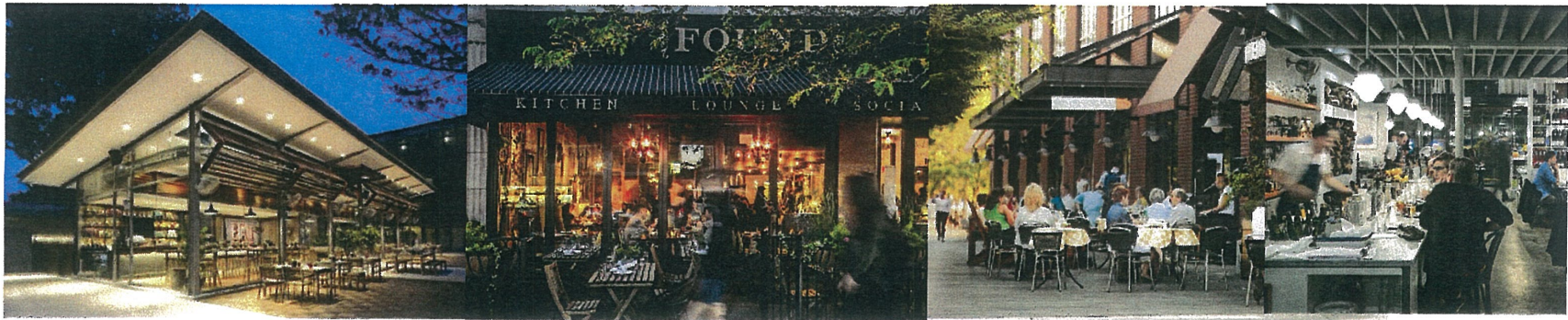


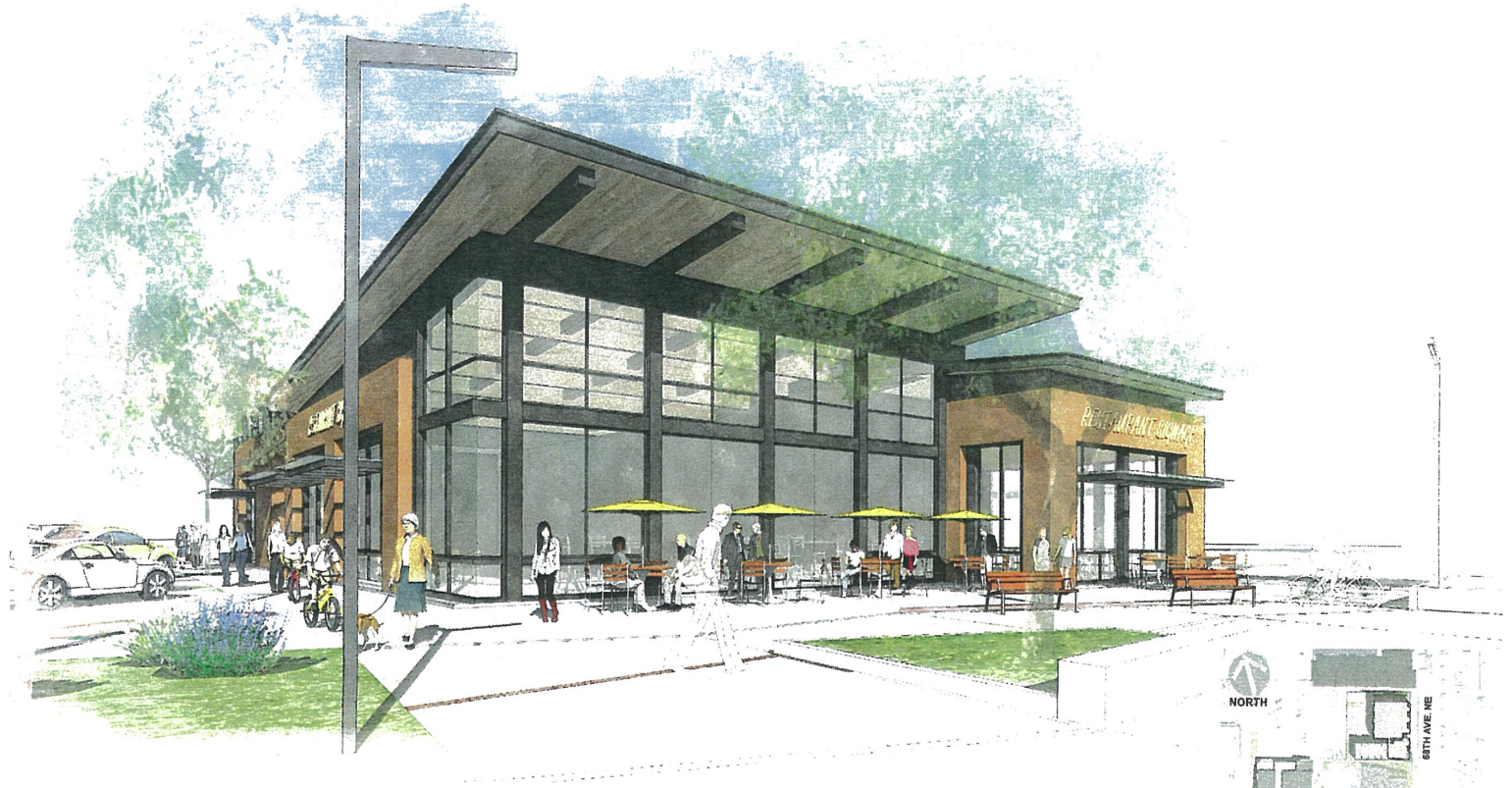


Spencer Square Part 2: Sit Down Restaurant + Office Design Inspiration

**NORTHWEST CONTEMPORARY
ACTIVATION OF TOWN GREEN
INDOOR/OUTDOOR DINING
AMBIANCE
VIBRANCY**

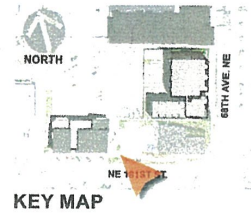
**VITALITY
CONVENIENCE
WALKABLE
SOCIALLY CONNECTED**





KENMORE, WASHINGTON

PERSPECTIVE VIEW



KEY MAP



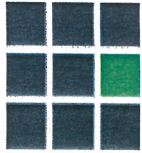
KENMORE, WASHINGTON

PERSPECTIVE VIEW



KENMORE, WASHINGTON

PERSPECTIVE VIEW



Comparison: Development Agreement to Current Plan

Use	Approved D.A.	Current Proposal	Delta
Commercial Fitness*	20,000 SF	0	-(20,000 SF)
Restaurant	5,000+ SF	5,000+ SF	None
Residential	0	24 THs and Flats	24 THs and Flats
Commercial/Residential	0	2,775 SF	2,775 SF
Retail/Office	0	1,850 SF	1,850 SF
Office	0	3,000 SF	3,000 SF
Parking	183	218	35 Stalls

- Less intensive use then previously approved
- More overall parking stalls
- Increased quality of materials
- Increased design compatibility with Town Green
- Pedestrian activation of 68th, Town Green and main entrance into development

* Fitness use estimated 323 parking stalls throughout a 4 block radius



Appendix: Site Plan & Parking

SPENCER SQUARE PROPOSED PARKING:

PARCEL A – Kenmore Camera 59 Surface Stalls

MainStreet Controlled Parcels:

Parcel C – Office/Restaurant 22 Surface Stalls

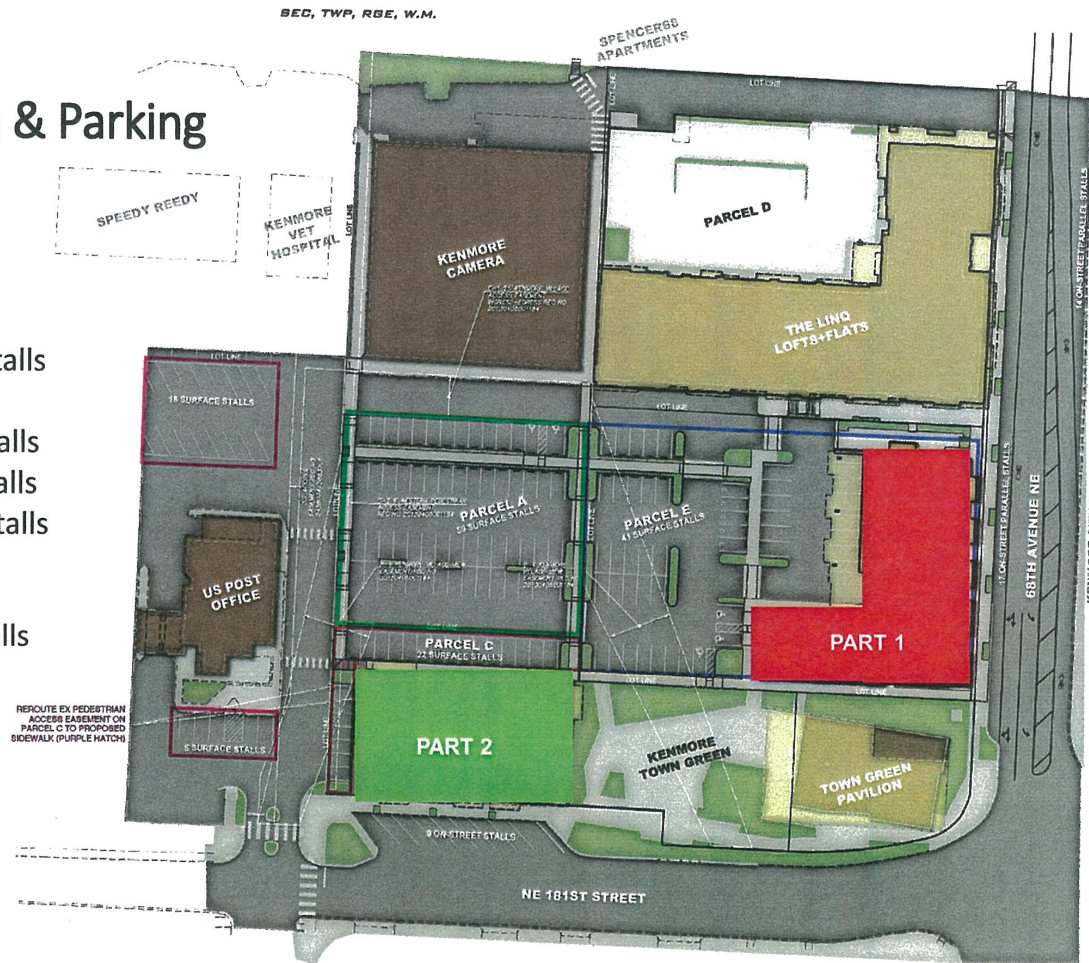
Parcel E – Mixed-Use Building 41 Surface Stalls
35 Covered Stalls

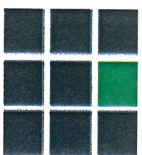
Total MainStreet Controlled Stalls 98 Stalls

Post Office Parcel 21 Stalls

On-Street Parking 40 Surface Stalls

TOTAL PARKING COUNT 218 Stalls

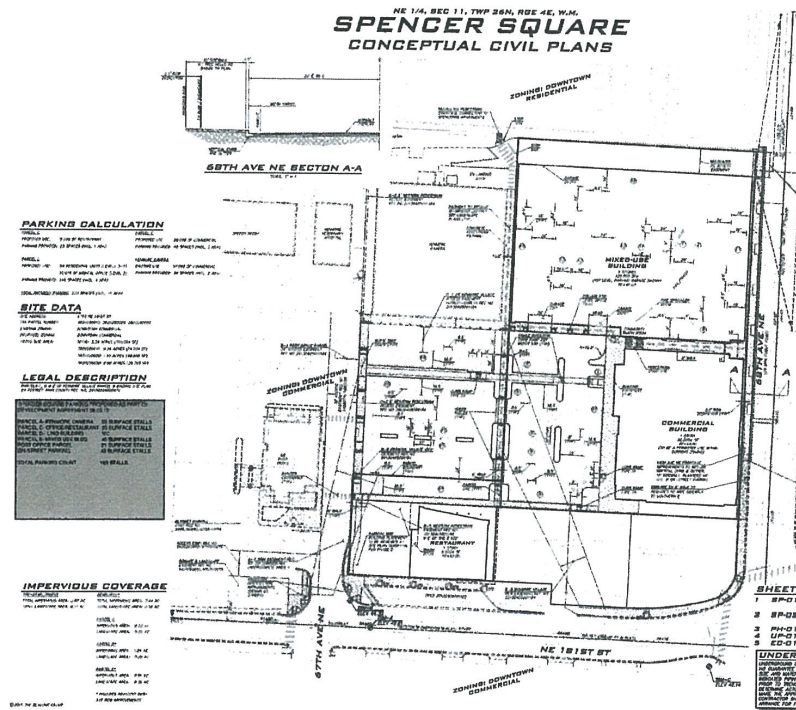


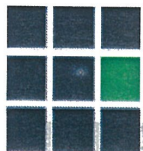


APPENDIX

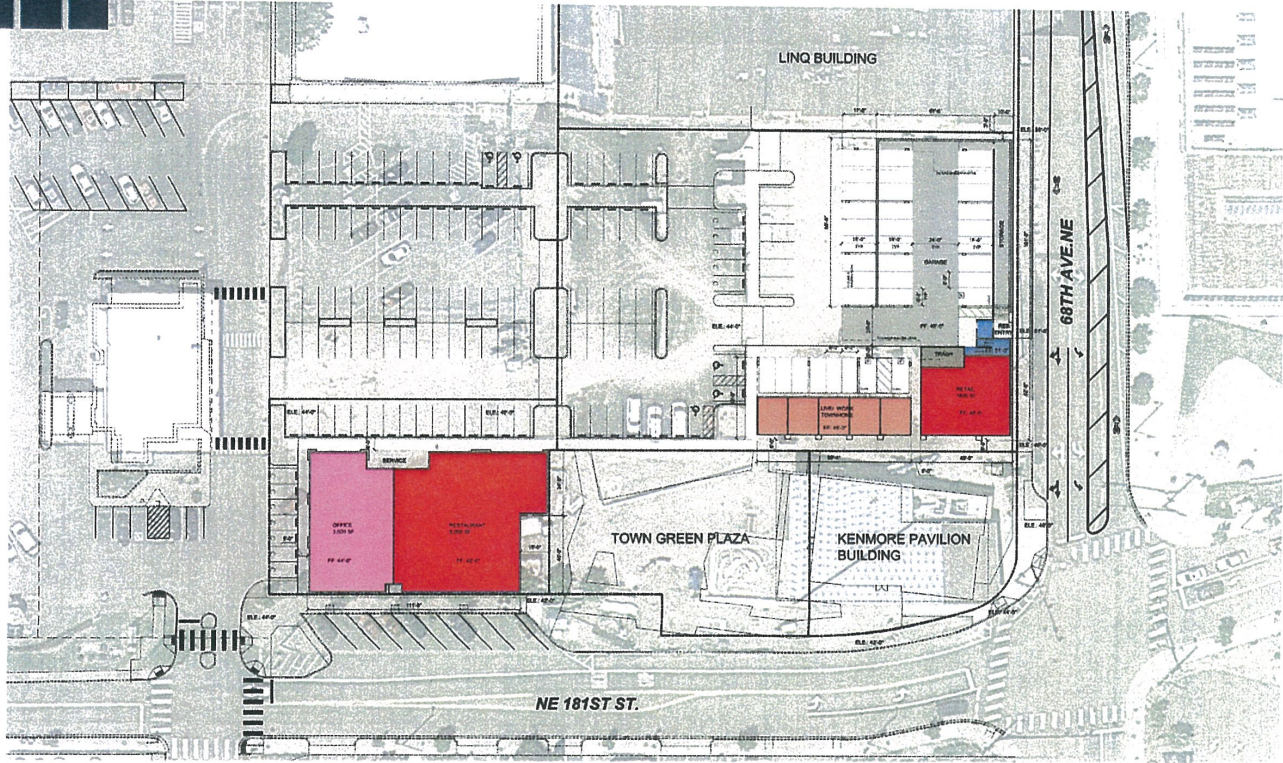


Appendix: Development Agreement Site Plan





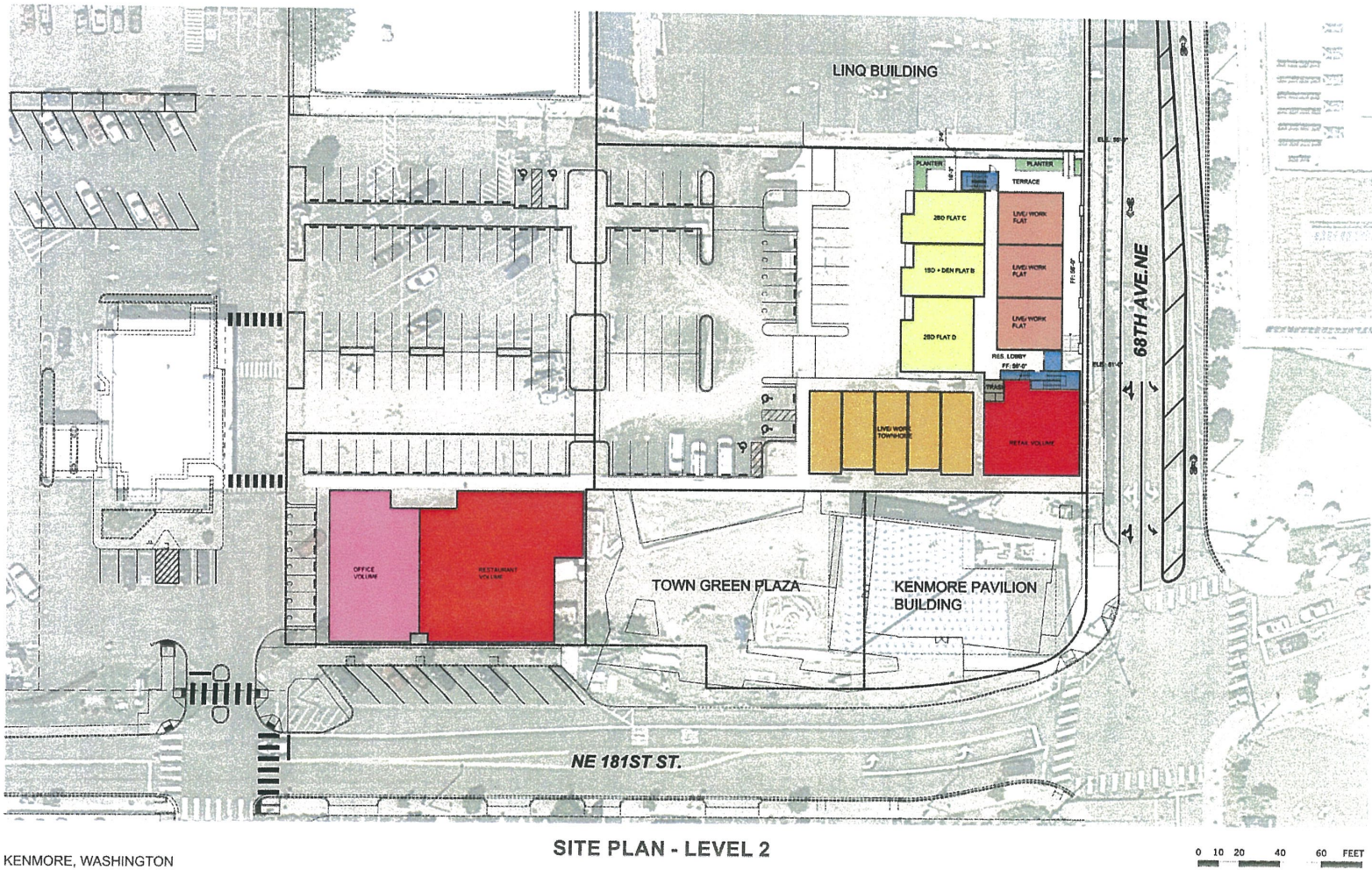
Appendix: Level 1 Site Plan

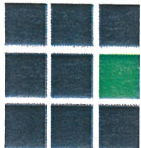


KENMORE, WASHINGTON

SITE PLAN - LEVEL 1

0 10 20 40 60 FEET





Appendix: Parking Demand Comparison



MEMORANDUM

Date:	May 1, 2017	TG:	1.14224.01
To:	City of Kenmore		
From:	Michael Swenson & Darwin Li, Transpo Group		
cc:	Kim Faust, Main Street Property Group		
Subject:	Spencer South Updated Parking Comparison		

This memorandum presents a comparison between the parking demand and supply identified in the 2015 development agreement and the current proposal. Note that the comparison excludes the parking demand and supply associated with the LINQ project as that is existing. Differences in both the parking supply and anticipated land uses are reflected in the updated plan. Methodology used to estimate the peak demand for the proposed uses are consistent with those presented for the previous analyses.

Project Description

The proposed development plan includes the construction of 27 residential units, 1,850 square feet of retail, 5,000 square feet of restaurant, and 3,000 square feet of office. Parking would be provided via the following:

- 35 underbuilding parking spaces
- 122 surface lot parking spaces shared with Kenmore Camera (59 stalls allocated)
- 40 adjacent on-street parking spaces
- 21 additional surface parking spaces, designated for the adjacent Post Office, are also available through a shared parking agreement.

The parking supply would total 218 parking spaces when considering the four areas noted above.

Parking Analysis

As mentioned previously, up to 218 parking spaces would be available under the revised plan, accommodating the demand for the residential, retail, restaurant and office uses. The previous 2015 development agreement had proposed 183 total spaces (consisting of 122 surface parking spaces, 40 on-street spaces, and 21 shared post office spaces) for the previously proposed health/fitness center and restaurant uses.

The table below summarizes the parking supply, shared peak parking demand and parking code requirements for the current proposed project and 2015 development agreement project.

Table 1. Parking Demand Comparison			
Proposed Project	Supply	Shared Peak Parking Demand ¹	Code Requirements
2015 Development Agreement	183 spaces	164 spaces (7-8 PM)	191 spaces
Current Proposal	218 spaces	126 spaces (12-1 PM)	186 spaces
Current Proposal excluding Post Office and on-street supply ²	157 spaces	120 spaces (12-1 PM)	183 spaces

¹ Shared peak parking demand of all considered land uses including Kenmore Camera and the Post Office that would potentially share surface parking and on-street parking spaces.

² Excludes supply and shared peak parking demand for post office use, as well as on-street parking supply.

As shown in Table 1, the 2015 development agreement would have a shared peak parking demand of 164 spaces and a supply of 183 spaces, which would result in a 19-parking space surplus. The current proposed project would have a 92-parking space surplus when including the on-street and post office supply, and a 37-parking space surplus when they are excluded. The new proposal provides approximately 20% additional parking spaces as compared to the previous proposal. Although all three parking scenarios would not meet parking code requirements, the parking demand analysis demonstrates that the demand can be accommodated in the proposed supply. The City of Kenmore allows parking demand studies to reduce code requirements for parking as proposed for this project.

