

<p>Document Title(s) (or transactions contained therein):</p> <p>1. DEVELOPMENT AGREEMENT AND PHASING PLAN FOR PEDESTRIAN CORRIDOR BRIDGE AND WEATHER PROTECTION</p>
<p>Reference Number(s) of Documents assigned or released: (or page of document(s))</p>
<p>Grantor(s) (Last name first, then first name and initials):</p> <p>1. LS2 RETAIL, LLC, a Delaware limited liability company</p> <p>2. LINCOLN SQUARE HOTEL, LLC, a Washington limited liability company</p> <p>3. City of Bellevue, a Washington municipal corporation</p> <p><input type="checkbox"/> Additional names on page of document.</p>
<p>Grantee(s) (Last name first, then first name and initials):</p> <p>1. LS2 RETAIL LLC, a Washington limited liability company</p> <p>2. LINCOLN SQUARE HOTEL, LLC, a Washington limited liability company</p> <p>3. City of Bellevue, a Washington municipal corporation</p> <p>4. <input type="checkbox"/> Additional names on page of document.</p>
<p>Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)</p> <p>Units 1 and 2, Lincoln Square Hotel, a condominium, volume 204 of condominiums, pages 42 through 59, in King County, WA; Retail Unit, Lincoln Square Expansion Condominium, a condominium, volume 285 of condominiums, pages 36 through 74, in King County, WA</p> <p><input checked="" type="checkbox"/> Full Legal Description is attached as Exhibits 1 and 2.</p>
<p>Assessor's Property Tax Parcel/Account Numbers:</p> <p>432341-0010; 432341-0020; 432335-0050</p>

Recording No. _____

After recording return original to:

City of Bellevue
City Attorney's Office
450 110th Ave. NE
Bellevue, WA 98009

**DEVELOPMENT AGREEMENT AND PHASING PLAN FOR PEDESTRIAN
CORRIDOR BRIDGE AND WEATHER PROTECTION**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into this _____ day of _____ 2016 between the CITY OF BELLEVUE, a Washington state municipal corporation ("City") and LS2 RETAIL, LLC, a Delaware limited liability company, and LINCOLN SQUARE HOTEL, LLC, a Washington limited liability company (together and individually, "Permittee").

RECITALS

The Major Pedestrian Corridor.

- A. The City's Downtown Core Design District in Chapter 20.25A.100 of the Bellevue Land Use Code ("LUC") implements the Downtown Subarea Comprehensive Plan Policies by providing more specific development guidelines, and by assuring high levels of attractiveness, urbanity, design quality, and coordination of development within the most intensive, visible portion of Downtown. Specifically, LUC 20.25A.100(E) defines NE 6th Street between Bellevue Way NE and 112th Avenue NE as a Major Pedestrian Corridor ("Pedestrian Corridor") to serve as a focus for pedestrian use. While the Pedestrian Corridor must present a coordinated design, variety in design is allowed and, in appropriate cases, encouraged in order to provide visual interest and harmony with adjacent development.
- B. The Pedestrian Corridor must comply with the Bellevue Pedestrian Corridor and Major Public Open Space Design Guidelines and incorporate numerous pedestrian amenities including but not limited to seating areas, landscaping, art features, weather protection and pedestrian scale lighting developed through the process described in Recital H below.
- C. Segments of the Pedestrian Corridor may be bridged or covered for weather protection, but not enclosed.
- D. Permittee wishes to construct a pedestrian bridge across NE 6th Street connecting that certain mixed use condominium project commonly known as Lincoln

Square, which is legally described on **Exhibit 1** hereto, and that certain mixed use condominium project commonly known as Lincoln Square Expansion, which is legally described on **Exhibit 2** hereto (the “Pedestrian Bridge”). The Pedestrian Bridge will connect to and function as part of the Pedestrian Corridor, providing weather protection both to pedestrians crossing between Lincoln Square and Lincoln Square Expansion and to the pedestrians on the ground plane below. The design of the Pedestrian Bridge is depicted in the conceptual design drawings attached hereto as **Exhibit 3** (the “Design Drawings”).

- E. Permittee has designed the Pedestrian Bridge to be iconic and part of the public realm. Its design is harmonious with adjacent development, including Lincoln Square and Lincoln Square Expansion.
- F. The Pedestrian Bridge is intended to activate and animate the west end of the Pedestrian Corridor between Bellevue Way NE and 105th Avenue NE.

Grand Connection.

- G. The Grand Connection initiative will establish a landmark and unique vision for downtown Bellevue that will create new opportunities for connectivity and community identity. The objectives of the study will be to establish an urban design vision for the Grand Connection, which will connect Bellevue’s waterfront at Meydenbauer Bay to the Wilburton commercial area, passing through and utilizing the Pedestrian Corridor through the heart of downtown Bellevue.
- H. Permittee will, in good faith, work with the City’s design consultant for the Grand Connection, Balmori Associates of New York, to develop a design for the ground plane for that portion of NE 6th Street between Bellevue Way NE and 105th Avenue NE, which is part of the Pedestrian Corridor. The design work for this segment of the Pedestrian Corridor is scheduled to be completed and adopted into the Land Use Code at the end of 2016 or early 2017. The parties intend that the design be mutually agreed upon between Permittee and the City and incorporated into the City’s Pedestrian Corridor and Major Public Open Space Design Guidelines. Unless otherwise extended by the agreement of the City and Permittee, Permittee’s obligation to coordinate the design with Balmori Associates terminates on December 31, 2018.
- I. The City and Permittee intend that the Pedestrian Bridge and the Ground Plane Improvements described in Sections 4 and 5 below will further the Grand Connection initiative consistent with Balmori Associates’ designs that are ultimately adopted by the City Council for the Pedestrian Corridor segment between Bellevue Way NE and 105th Avenue NE (the “Balmori Associates’ Design”).

Development Agreement Authorized.

- J. The City is a municipal corporation under the laws of the State of Washington with authority to enact laws and enter into agreements to promote the health, safety and welfare of its citizens, including approval of land use plans and development.
- K. The City is authorized by RCW 36.70B.170 to enter in to a development agreement, which sets forth the requirements for future development of the Pedestrian Bridge project.

Public Process.

- L. Pursuant to RCW 36.70B.200, this Agreement was subject to a public hearing before the City Council, which was duly advertised in the Weekly Permit Bulletin on April 28, 2016, and held on May 16, 2016. The City Council reviewed and took official action adopting this Agreement on _____, 2016.
- M. The City has reviewed the Combined Design Review and SEPA Determination for Lincoln Square Expansion, dated March 6, 2008, as amended, and determined that the impacts of this Agreement and the Pedestrian Bridge project are covered within the impacts analyzed in the environmental documents for the Lincoln Square Expansion and addressed by the applicable city codes and standards.

AGREEMENT

In consideration of the mutual undertaking and promises contained herein, and the benefits to be realized by each party and in future consideration of the benefit to the general public by the creation and operation of the Pedestrian Bridge and improvements to the ground plane below, the adequacy of which is hereby acknowledged, the parties agree as follows regarding development and use of the Pedestrian Bridge and the ground plane below, which are part of the City's Pedestrian Corridor.

1. DEFINITIONS

"User Parties" shall mean the customers, potential customers, clients, potential clients, visitors, licensees, invitees, tenants, potential tenants, occupants, potential occupants of the condominium units owned by Permittee or by other unit owners in Lincoln Square Expansion Condominium, as further described in that certain Declaration of Covenants, Conditions, Easements, Restrictions and Reservations for Lincoln Square Expansion Condominium, recorded on December 4, 2015, as recording number 20151204001095, or in the Master Declaration for Lincoln Square record under recording number 20041228002242.

2. GRANT OF RIGHT TO USE AIRSPACE.

The City Council finds the placement of the Pedestrian Bridge in the airspace above NE 6th Street between Bellevue Way NE and 105th Avenue NE as proposed will not interfere with the use of the street surface as a public right-of-way and Major Pedestrian Corridor. The Council further finds the placement of the support structures of the Pedestrian Bridge in the right-of-way will not materially interfere with the surface use of the right-of-way. It is in the best interest of the City to permit Permittee to so use the airspace and right of way to further the spirit of the Downtown Subarea Comprehensive Plan and the Council's vision for the Grand Connection. In the judgment of the City Council, the use of the airspace and right-of-way will not be needed for or be inconsistent with the public purposes for which they were acquired, are being used, or to which they may be devoted. In consideration for the mutual benefits to the parties and the terms and conditions of this Agreement, the City grants to Permittee, for the benefit of Permittee and the User Parties, the right to use and allow the User Parties to use that portion of the airspace over NE 6th Street between Bellevue Way NE and 105th Avenue NE and the adjoining right-of-way not less than 16 feet above the street at its present grade and covering an area of approximately 980 square feet, for the construction of, operation of, and maintenance in place of support structures for the Pedestrian Bridge in accordance with the Design Drawings. The area to be occupied by the Pedestrian Bridge and associated support structures is legally described in the attached **Exhibit 4**.

3. TERM OF AGREEMENT.

Permittee may use the airspace and adjacent right-of-way to construct, operate, and maintain the Pedestrian Bridge and support structures for a period of fifty (50) years, commencing on the day the Pedestrian Bridge is first opened for public use by Permittee. Permittee shall have three (3) successive options to extend the term for an additional period of ten (10) years, subject in each instance to the terms of this Agreement, each by giving the City at least sixty (60) days written notice prior to the expiration of the then current Agreement term; provided, that Permittee shall not be in breach of any provision of this Agreement or any related permit condition at the time that any such option is exercised.

4. PHASE 1 – BRIDGED PORTION OF PEDESTRIAN CORRIDOR.

A. Conceptual Design of Pedestrian Bridge. The City Council reviewed the conceptual design of the Pedestrian Bridge as depicted in **Exhibit 3** and finds that the design is iconic, that the Pedestrian Bridge will be part of the public realm, and that the Pedestrian Bridge will activate and animate the west end of Pedestrian Corridor between Bellevue Way NE and 105th Avenue NE. The Council further finds the conceptual design is consistent with LUC

20.25A.100(E)(1)(c). If Permittee elects to construct the Pedestrian Bridge, Permittee shall construct and maintain the Pedestrian Bridge substantially in accordance with the Design Drawings attached hereto as **Exhibit 3**. Any substantial modifications to the conceptual plans included herein, in the opinion of the City, shall be approved by the City Council as an addendum or amendment to this Agreement. Permittee shall construct the Pedestrian Bridge in conformance with any permits issued by the City and all applicable City codes. Support by the City Council of the conceptual design of the Pedestrian Bridge does not release Permittee from other applicable requirements contained in the City's land use and development regulations nor does it supersede or replace additional permit approvals.

B. No Enclosure. As shown on **Exhibit 3**, the Pedestrian Bridge may be covered for weather protection, but not enclosed and shall remain open to the public realm on both sides above the 4-foot side walls.

C. Connection to the Pedestrian Corridor. If Permittee elects to construct the Pedestrian Bridge, and for so long as the Pedestrian Bridge remains in place, Permittee shall include an initial connection to the Pedestrian Corridor in the form of an elevator from the NE 6th Street sidewalk to the Pedestrian Bridge. An appropriate connection between the Pedestrian Bridge and the ground plane below is crucial to further the Grand Connection Initiative.

D. Design Review. Approval of this Agreement by the City Council constitutes the Council's approval of the conceptual design of the Pedestrian Bridge. No further design review is required other than the Land Use Exemption process set forth in LUC 20.30F.175 provided any modifications to the Design Drawings that are, in the reasonable opinion of the City, substantial modifications require additional approval by the City Council as an addendum or amendment to this Agreement. A final design that is consistent with the Design Drawings attached hereto as **Exhibit 3** shall be submitted to the Development Services Director to ensure consistency with the Land Use Exemption (File No. 16-129685) granted under the terms of LUC 20.30F.175 for issuance of required structural permits. The City reserves authority to impose new or different regulations applicable to the Pedestrian Bridge project to the extent required by a serious threat to public health and safety.

E. Agreed Condition. In consideration of the City Council's approval of this Agreement, each Permittee shall complete or cause to be completed the Ground Plane Improvements pursuant to Section 5 below for that portion of NE 6th St. between Bellevue Way NE and 105th Avenue NE shown on **Exhibit 5**. Permittee's obligation to complete any improvements on property other than the property described in **Exhibit 1** or **Exhibit 2** shall be subject to Permittee's receipt of permission to complete such improvements from the owner of such property where work is to be performed. The City will execute commercially reasonable documents necessary to provide Permittee with permission to access

and construct any ground plane improvements located within the City's right of way.

F. Relocation of Facilities. Permittee shall bear the cost of relocating traffic signals, traffic lights, public utilities and other municipal operations or functions necessitated by the construction of the Pedestrian Bridge. All such work shall be accomplished in compliance with applicable City standards for road and utility work with review and approval by the Directors of the Transportation and Utilities Departments. The City will execute commercially reasonable documents necessary to provide Permittee with permission to access the City's right of way for construction of the Pedestrian Bridge.

5. PHASE 2 – GROUND PLANE BELOW BRIDGED PORTION OF THE PEDESTRIAN CORRIDOR.

A. Ground Plane Redesign and Permittee's Responsibility for Improvement. Permittee shall work cooperatively and in good faith with Balmori Associates of New York in developing a plan for the redesign of the ground plane along NE 6th Street between Bellevue Way NE and 105th Avenue NE ("Balmori Associates' Design"). The parties intend that the Balmori Associates' Design will be mutually agreed upon and incorporated into the City's Pedestrian Corridor and Major Public Open Space Design Guidelines. The City Council intends that the Balmori Associates' Design draw the pedestrian across NE 6th St. and provide seating and a venue for small gatherings. The cost of the Balmori Associates' Design, , for which Permittee is responsible (the "Ground Plane Improvements") shall not exceed the amount of the bond set forth in Section 5(C) below appropriately reduced by any LSE Improvements the removal, alteration or relocation of which is required to implement the Balmori Design as described in Section 5(B) below and any Duplicate Facility Relocation Costs described in Section 5(D) below or the area in which Permittee is required to install improvements set forth in Section 5(G) below and shown on Exhibit 5.

B. LSE Improvements. [RESERVED].

C. Bond and Right of Entry. Within 60 days of the City Council adopting the amendment to the Pedestrian Corridor and Major Public Open Space Design Guidelines discussed in Section 5(A) above, Permittee will provide a bond or other financial security acceptable to the City in the amount of \$500,000.00 as security for completion of the Ground Plane Improvements. The City and Permittee intend that this bond will be sufficient to cover the estimated costs to complete the Ground Plane Improvements. The City will hold the bond until such time as Permittee has completed the Ground Plane Improvements and the City has approved such improvements as consistent with LUC 20.25A.100(E)(1)(c) and the Pedestrian Corridor and Major Open Space Design Guidelines in effect at the time of application is made for the Improvements and after completion of any required inspections thereof. The City acknowledges and

agrees that the completion of the Ground Plane Improvements is not a condition of the Combined Design Review and SEPA Determination for Lincoln Square Expansion, dated March 6, 2008, as amended, and that the failure to timely complete such improvements shall not cause the withholding or delay of any temporary or final certificate of occupancy for Lincoln Square Expansion, nor shall it affect any temporary or final certificate of occupancy issued for Lincoln Square. Each Permittee will execute commercially reasonable documents necessary to provide the City with permission to access and construct any ground plane improvements located within each Permittee's property.

D. Relocation of Facilities. Permittee shall bear the cost of relocating traffic signals, traffic lights, public utilities and other municipal operations or functions necessitated by the construction of the ground plane. In the event that Permittee bore the cost of relocating certain facilities pursuant to Section 4(F) of this Agreement, and those same facilities must be relocated a second time in order to complete the Ground Plane Improvements, Permittee's total financial obligation for the Ground Plane Improvements will be reduced by the cost of this second relocation (the "Duplicate Facility Relocation Costs"). All relocation work shall be accomplished in compliance with applicable City standards for road and utility work with review and approval by the Directors of the Transportation and Utilities Departments. The City will execute commercially reasonable documents necessary to provide Permittee with permission to access and construct any Ground Plane Improvements located within the City's right of way and, given the beneficial nature of this work to the City and the public, shall not charge Permittee any right of way fees in connection with such use beyond the costs associated with Development Services staff time.

E. Improvements to the Street Level to Activate and Animate the West End of the Pedestrian Corridor. Consistent with the Ground Plane Improvements, Permittee shall construct improvements to the plaza on either side of NE 6th Street consistent with the Balmori Associates' Design. The City Council intends that this design will draw the pedestrian across NE 6th Street and provide seating and a venue for small gatherings.

F. Timeline for Construction of Ground Plane Improvements. Within 45 days after the City Council adopts the amendment to the Pedestrian Corridor and Major Public Open Space Design Guidelines discussed in Section 5(A) above, Permittee will submit applications to the City for the Ground Plane Improvements. The parties agree to work cooperatively to ensure that all permits are reviewed and processed expeditiously. Permittee will complete the Ground Plane Improvements within six (6) months after issuance of the final permit required to begin construction of the Ground Plane Improvements. If Permittee's completion of the Ground Plane Improvements is delayed for reasons beyond Permittee's control, the Director of Development Services is hereby authorized to administratively grant up to an additional six (6) months to allow Permittee to

complete the Ground Plane Improvements, without formal amendment to this Agreement.

G. Improvement Area; Right of Entry to Construct Ground Plane. The limits of the area in which Permittee is required to install Ground Plane Improvement is shown on **Exhibit 5**. The City will execute documents necessary to provide the Permittee with permission to access and construct any Ground Plane Improvements within the City's property.

6. MATTERS APPLICABLE TO BOTH PHASES.

A. Public Access and Use. Permittee hereby acknowledges that as owner of the property that will be used for the Pedestrian Bridge circulation and access between the Bridge and public right-of-way such property is subject to a nonexclusive right of pedestrian use and access by the public during the hours of Pedestrian Bridge operation. Permittee covenants that it shall comply with this requirement.

B. Enforcement. Permittee further acknowledges that the public right for pedestrian use shall be enforceable by the City and the City shall have full rights of access to the Pedestrian Bridge and associated circulation routes for purposes of enforcing the rights of the public under this Agreement; subject, however, to such reasonable rules and regulations adopted by Permittee to govern the Pedestrian Bridge. Closures to prevent property damage or personal injury and/or to perform necessary repairs shall not violate this section or any other section of this Agreement. Permittee shall not hinder the City's rights of access under this Agreement in any fashion.

C. Insurance and Indemnification. So long as this Agreement is in effect, Permittee shall maintain public liability insurance in combined single-limit coverage of not less than one million dollars (\$1,000,000.00) naming the City as an additional insured. Permittee shall defend, indemnify and hold the City, its officers, employees and agents against all losses or liabilities for any personal injury or property damage to any person or entity arising from the City Council's approval of this Agreement or from Permittee's exercise of its rights and privileges hereunder.

D. Rules and Regulations. Permittee shall maintain the pedestrian access route to access and move across the Pedestrian Bridge and may adopt reasonable rules and regulations for the use of this space; provided that such rules and regulations do not preclude reasonable pedestrian use and access consistent with the nature of Lincoln Square and Lincoln Square Expansion as first-class shopping centers in mixed use condominium developments comprised of retail, office, hotel and residences, and consistent with this Agreement. Permittee shall abide by all applicable local, state and federal laws, rules and regulations in the operation of the Pedestrian Bridge.

7. COMPENSATION.

A. Annual Fee. Commencing on the day the Pedestrian Bridge is first opened for public use, Permittee shall pay to the City an annual fee for such use. The initial annual fee shall be Twenty Eight Thousand Dollars (\$28,000.00) per year. This fee may be adjusted as provided herein. Payment must be received by January 15 of each successive year of the Agreement. Payment for the first year in which the Pedestrian Bridge is opened may be pro-rated based on the number of months it is in actual use.

B. In-Kind Services. In lieu of direct payment of the fee to the City, and following approval from the City, in-kind services of equal or greater value may be performed by Permittee or its contractors. Such services may include:

- 1) Establishment and maintenance of streetscape including major rotational plant color displays;
- 2) Streetscape irrigation;
- 3) Weeding, trimming;
- 4) Garbage/Litter pickup;
- 5) Maintenance/replacement of street furniture including but not limited to benches, drinking fountains, bike racks, garbage cans, kiosks, way-finding signage; or
- 6) Other real property improvements or services as agreed to by the City.

Any such in-kind services must be provided adjacent to property located along NE 6th Street between Bellevue Way NE and 105th Avenue NE. Verification of value must be provided to the City no later than the due date for rental payments and such value shall be accumulated for credit against the rent payment for succeeding years should such value exceed the amount of the annual fee due. Any balance due the City will be due upon the regular annual fee payment date(s).

C. Adjustments to Annual Fees.

- 1) Timing. No adjustment of the annual fee shall be made prior to five (5) years from the date of this Agreement, and subsequent adjustments shall not be made more frequently than at three (3) year intervals. The adjustment shall be non-cumulative and shall be increased or decreased by the percentage of change, if any, in the Seattle-Everett Metropolitan Area Consumer Price Index for All Urban Consumers, United States City Average for All Items (1982-84=100) ("CPI"), as published by the United States Department of Labor's Bureau of Labor Statistics. The Base period, for the purposes of such adjustment, shall be the CPI for the 4th calendar month immediately preceding the month for which the first payment is due under the terms of this Agreement (the "Base

CPI"). The fee shall be adjusted for each year on the basis of the percentage change in the CPI for the 4th calendar month immediately preceding the beginning of each year subject to adjustment compared to the Base CPI. Should the CPI be discontinued, the parties shall select another similar index which reflects consumer prices in the Bellevue Urban area.

(By way of illustration only, if the Base CPI is 190 and the CPI figure for the 4th quarter month before the fifth year is 195, then the annual fee for the fourth year shall be increased by 2.63 %.)

- 2) Notice of Adjustment. The City shall give ninety (90) days written notice to Permittee that a fee adjustment is being made. This notice shall include the amount of the adjusted fee and the date the new rate is to be effective. When a rate is agreed upon by the City and Permittee both parties shall execute an amendment to this Agreement reflecting the new rate.

8. RIGHT TO NOT BUILD/RIGHT TO REMOVE STRUCTURE.

Notwithstanding anything to the contrary in this Agreement, this Agreement does not obligate Permittee to construct the Pedestrian Bridge. However, should Permittee construct the Pedestrian Bridge, it must complete the Ground Plane Improvements pursuant to and described in Section 5 above. Furthermore, Permittee shall have the right at any time to remove the Pedestrian Bridge at its expense provided removal does not materially impede use of the ground plane below or otherwise impact circulation in the Pedestrian Corridor, except as temporarily and reasonably necessary to protect the safety of pedestrians during the removal work. If Permittee elects to do so, it shall leave the airspace and right-of-way free and clear of all buildings, structures or encroachments. Upon removal of all buildings, structures, and encroachments, Permittee's obligations under this Agreement shall cease.

9. TERMINATION.

A. Termination for Public Purpose. The City may terminate this Agreement at any time when and if the City determines that any or all of the airspace or encumbered right-of-way are needed for any public purpose. Permittee shall cease use upon being given a minimum of two (2) years written notice of termination of said permit.

- 1) Public Hearing. The decision to terminate this Agreement for use for a public purpose shall be made by the City Council after conducting a public hearing and upon finding that there is no reasonable alternative to use of the airspace or encumbered right-of-way for the conflicting

public purpose.

- 2) Relocation of Pedestrian Crossing. Should the City elect to terminate this Agreement for a public purpose, the City shall make all reasonable efforts to assist Permittee to relocate the pedestrian crossing to an above or below grade location to allow businesses served by the bridge to continue to be served by a pedestrian crossing. The City shall expedite review of any application for an alternative pedestrian crossing.
- 3) Compensation for Early Termination. In order for the City to regain possession, Permittee shall be compensated by the City for the loss of the Pedestrian Bridge and related improvements. For the first fifteen (15) years, compensation shall be the cost incurred by Permittee for the construction of the Pedestrian Bridge and related improvements. Thereafter, compensation shall be reduced by depreciating the cost on a straight line basis over a period of fifteen (15) years from the date the cost is incurred. The initial cost of the Pedestrian Bridge and related improvements is shown in **Exhibit 6** to this Agreement.

B. Termination Arising out of Breach. The City may alternatively terminate this Agreement at any time should Permittee materially breach the terms and conditions of this Agreement. Prior to such termination Permittee shall be given written notice of the breach and an opportunity to cure said breach within ten (10) business days of said written notice. Should Permittee fail to cure said breach within the cure period, the City may terminate this Agreement and Permittee shall immediately cease use of the airspace and take action to comply with the terms of Section 10 below; PROVIDED, that the City may, upon good cause shown, extend the time to cure any breach by Permittee. Agreement to extend the time in one case does not obligate the City to further or other extensions of time to cure. If the City terminates this Agreement based upon Permittee's breach, Permittee shall not be entitled to any compensation from the City for early termination.

10. REMOVAL OF IMPROVEMENTS ON TERMINATION.

If the Pedestrian Bridge is no longer used in conjunction with the rights and uses associated with this Agreement, or if the City provides notice to Permittee that it will seek to terminate this Agreement for a breach of the terms of this Agreement, or if this Agreement expires according to its terms, then all rights granted under this Agreement shall cease and the Pedestrian Bridge and support structures shall be removed from the City's airspace and right-of-way at no cost or expense to the City, leaving the airspace and right-of-way free of all buildings, structures and encroachments.

Should Permittee fail to remove the Pedestrian Bridge within ninety (90) days of termination, the City shall have the right to remove the Pedestrian Bridge and

support structures located within the right-of-way. The costs of removal by the City shall comprise a lien against the adjoining property for all costs of removal, including reasonable attorney's fees if suit is initiated to compel removal.

11. STORM DRAINAGE.

All storm drainage from the Pedestrian Bridge shall be disposed of in a manner acceptable to the Director of the Utilities Department and consistent with applicable federal, state, and local regulations.

12. ASSIGNMENT.

A. General Assignments. Any assignment of this Agreement by Permittee that is substantially in the form attached hereto as **Exhibit 7** shall not require review or approval of the City. All other general assignments shall take effect only if approved in writing by the City, which approval shall not be unreasonably withheld.

B. Assignment for Security Purposes. No consent of the City is required when the assignment of this Agreement is to a lender and is only for security purposes. However, no assignment for security purposes shall limit or impair in any way the City's ability to terminate this Agreement as provided in Section 9 and, any subsequent assignment by the lender shall conform to subsection A above.

C. Notices. Permittee shall provide notice to the City of both a general assignment and an assignment for security purposes within thirty (30) days of the execution of the assignment. Any notice of breach required by Section 9(B) shall also be given to any lender holding an assignment for security purposes and, should the Permittee fail to cure the breach, the assignee/lender shall be given reasonable time to cure such default in order to maintain the Agreement in full force and effect.

13. RECORDING.

Within 30 days after execution of this Agreement, this Agreement shall be recorded by Permittee with the King County Division of Records and Elections. Upon recording, the original document shall be returned to the City.

14. AMENDMENT.

This Agreement shall not be amended without the express written approval of the parties. The City Council must approve all amendments to this Agreement by ordinance or resolution, and only after notice to the public in a public hearing.

15. CONSTRUCTION.

This Agreement has been reviewed and revised by legal counsel for all parties, and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to interpretation or enforcement of this Agreement.

16. PARTIAL INVALIDITY.

If any portion or provision of this Agreement is held invalid, the validity and enforceability of the remainder of this Agreement shall not be affected.

17. BINDING ON SUCCESSORS.

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the City and Permittee.

18. WHOLE AGREEMENT.

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the City and Permittee.

19. NO THIRD PARTY RIGHTS.

The parties intend that the rights, obligations, and covenants in this Agreement and the collateral instruments shall be exclusively enforceable by City and Permittee, their successors and assigns. No term or provision of this Agreement shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder, except as may be otherwise expressly provided herein.

20. NOTICE.

All correspondence and any notice required in this Agreement shall be delivered to the following parties:

CITY OF BELLEVUE

Attention: Ms. Carol Helland
Land Use Director
450 110th Avenue NE
PO Box 90012
Bellevue, WA 98009
Email: chelland@bellevuewa.gov

With a copy to:

Robert Hyde, Deputy City Attorney
450 110th Avenue NE
PO Box 90012
Bellevue, WA 98009
Email: rhyde@bellevuewa.gov

LS2 RETAIL, LLC

Attn.: Jan Hurley
Kemper Development Company
575 Bellevue Square
Bellevue, Washington 98004
Email: jan.hurley@kemperdc.com

LINCOLN SQUARE HOTEL, LLC

Attn.: Jan Hurley
Kemper Development Company
575 Bellevue Square
Bellevue, Washington 98004
Email: jan.hurley@kemperdc.com

With a copy to:

Alison Moss
Schwabe, Williamson & Wyatt
1420 5th Ave., Suite 3400
Seattle, WA 98101
Email: amoss@schwabe.com

21. SEVERABILITY.

If any provision of this Agreement is determined to be unenforceable or invalid by a court, the remaining terms of this Agreement shall remain in effect.

Dated: _____ CITY OF BELLEVUE

By _____
Deputy City Manager

Attest: _____
City Clerk

Dated: _____

LS2 RETAIL, LLC

By: Kemper Development Company

Its: Manager

By: _____

Title: _____

Dated: _____

LINCOLN SQUARE HOTEL, LLC

By: Kemper Development Company

Its: Manager

By: _____

Title: _____

Approved as to form:

City Attorney

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/she
signed this instrument, on oath stated that he/she was authorized to execute the
instrument and acknowledged it as the _____ of the City of
Bellevue, a Washington municipal corporation, to be the free and voluntary act of
such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public
Print Name _____
My Commission Expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that he/she
signed this instrument, on oath stated that he/she was authorized to execute the
instrument and acknowledged it as the _____ of LS2 RETAIL,
LLC to be the free and voluntary act of such party for the uses and purposes
mentioned in the instrument.

Dated: _____

Notary Public
Print Name _____
My Commission Expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that he/she
signed this instrument, on oath stated that he/she was authorized to execute the
instrument and acknowledged it as the _____ of LINCOLN
SQUARE HOTEL, LLC to be the free and voluntary act of such party for the uses
and purposes mentioned in the instrument.

Dated: _____

Notary Public
Print Name _____
My Commission Expires _____

EXHIBIT 1

LEGAL DESCRIPTION OF LINCOLN SQUARE

Units 1 and 2, Lincoln Square Garage, a condominium, survey map and plans recorded in Volume 204 of Condominiums, Pages 1 through 41, inclusive, and any amendments thereto; Condominium Declaration recorded under recording number 20050316000512, and any amendments thereto;

Units 1 and 2, Lincoln Square Retail, a condominium, survey map and plans recorded in Volume 204 of Condominiums, Pages 60 through 98, inclusive, and any amendments thereto; Condominium Declaration recorded under recording number 20050316000595, and any amendments thereto;

Units 1 and 2, Lincoln Square Hotel, a condominium, survey map and plans recorded in Volume 204 of Condominiums, Pages 42 through 59, inclusive, and any amendments thereto; Condominium Declaration recorded under recording number 20050316000514, and any amendments thereto;

Units 1 and 2, Lincoln Square Office, a condominium, survey map and plans recorded in Volume 205 of Condominiums, Pages 1 through 10, inclusive, and any amendments thereto; Condominium Declaration recorded under recording number 20050316000597, and any amendments thereto; and

One Lincoln Tower, a condominium, survey map and plans recorded in Volume 211 of Condominiums, Pages 70 through 98, inclusive, and any amendments thereto; Condominium Declaration recorded under recording number 20051215002387, and any amendments thereto;

All in King County, Washington.

EXHIBIT 2

LEGAL DESCRIPTION OF LINCOLN SQUARE EXPANSION

Garage Unit, Lincoln Square Expansion Condominium, a condominium, survey map and plans recorded in Volume 285 of Condominiums, Pages 36 through 74, inclusive, and any amendments thereto; Condominium Declaration recorded under recording number 20151204001095, and any amendments thereto;

Hotel Unit, Lincoln Square Expansion Condominium, a condominium, survey map and plans recorded in Volume 285 of Condominiums, Pages 36 through 74, inclusive, and any amendments thereto; Condominium Declaration recorded under recording number 20151204001095, and any amendments thereto;

Office Unit, Lincoln Square Expansion Condominium, a condominium, survey map and plans recorded in Volume 285 of Condominiums, Pages 36 through 74, inclusive, and any amendments thereto; Condominium Declaration recorded under recording number 20151204001095, and any amendments thereto;

Retail Unit, Lincoln Square Expansion Condominium, a condominium, survey map and plans recorded in Volume 285 of Condominiums, Pages 36 through 74, inclusive, and any amendments thereto; Condominium Declaration recorded under recording number 20151204001095, and any amendments thereto; and

Residential Unit, Lincoln Square Expansion Condominium, a condominium, survey map and plans recorded in Volume 285 of Condominiums, Pages 36 through 74, inclusive, and any amendments thereto; Condominium Declaration recorded under recording number 20151204001095, and any amendments thereto;

All in King County, Washington.

EXHIBIT 3
DESIGN DRAWINGS

EXHIBIT 4

LEGAL DESCRIPTION OF AREA OCCUPIED BY PEDESTRIAN BRIDGE

To be provided to the City by Permittee within 30 days of execution of this Development Agreement.

EXHIBIT 5
GROUND PLANE IMPROVEMENT AREA

EXHIBIT 6

INITIAL COST OF PEDESTRIAN BRIDGE AND RELATED IMPROVEMENTS

To be provided to the City by Permittee within 30 days after completion of construction of the Pedestrian Bridge.

EXHIBIT 7

ASSIGNMENT AND ASSUMPTION OF AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF AGREEMENT is made and entered into this ____ day of _____, _____, by _____ (“Assignor”) and _____ (“Assignee”).

RECITALS:

- A. Assignor is the Permittee (or successor in interest to the Permittee) under that certain Development Agreement (“ Agreement “) with the City of Bellevue, dated _____, 2016, pertaining to a Pedestrian Bridge to extend from Lincoln Square I to Lincoln Square II across NE 6th Street Bellevue, King County, Washington.
- B. Assignor desires to assign its interest to Assignee as Permittee (or the successor in interest to Permittee) under the Agreement, and Assignee desires to accept the assignment and to assume Assignor’s obligations thereunder;

NOW, THEREFORE, in consideration of the promises and conditions contained herein, the parties hereby agree:

- 1. Effective as of the date hereof, Assignor hereby assigns, conveys and transfers to Assignee all of its right, title and interest in and to the Agreement dated _____, 2016.
- 2. Effective as of the date hereof, Assignee hereby assumes and Agrees to perform all of the obligations of Permittee under the Agreement that arise subsequent to the effective date, and shall indemnify and hold Assignor harmless from any and all cost, liability, loss, damage or expense, including without limitation, reasonable attorneys’ fees, to the extent resulting from the Permittee’s obligations under the Agreement that relate to the period on or after the effective date.
- 3. Assignee acknowledges that the Agreement contains provisions that entitle the City, under certain circumstances, to terminate the Agreement. No assignment of the Agreement shall in any way limit or impair in any respect any of the rights or remedies of the City under the Agreement with regard to any unperformed obligations. Nor shall this

assignment in any way limit or impair or alter the City's right to terminate pursuant to the terms of the Agreement.

4. This Assignment shall be binding on and inure to the benefit of the parties hereto, their successors in interest and assigns.
5. This Assignment shall be governed by and construed in accordance with the laws of the State of Washington.
6. This Assignment shall not be effective until notice thereof is given to the City of Bellevue.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment the day and year first above written.

ASSIGNOR:

ASSIGNEE:

