

**Town of Basalt, Colorado**  
**Ordinance No. 28**  
**Series of 2015**

**ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO APPROVING AMENDMENTS TO THE APPROVAL DOCUMENTS FOR THE WILLITS TOWN CENTER PUD AND AUTHORIZING TRANSFER OF PROPERTY INTERESTS FROM THE TOWN TO THE WILLITS TOWN CENTER (WTC) DEVELOPER**

RECITALS

A. Willits Town Center LLC, as the current Developer of the Willits Town Center PUD filed an application and subsequently submitted additional materials (collectively the "Application") with the Town of Basalt, Colorado ("Town"), for approval of amendments to the Approval Documents for the Willits Town Center PUD. The area included within the application consists of the area defined as Blocks 1-12 and all Tracts as shown on the Plat of Willits Town Center Planned Unit Development, recorded July 25, 2001 as Reception No. 763043, as the same has subsequently been amended and restated, and replatted into Filings and Condominiums.

B. Amendments to the existing approvals for Willits Town Center are being requested by the Developer. The more significant land use changes requested by the Developer include the following: 1) Increase the Maximum Allowable Floor Area in the PUD by 91,000 square feet; 2) Increase the Maximum Allowable Residential Floor Area in the PUD by 31,500 square feet; 3) Amend the existing timing requirements for the Developer to offer fully deed-restricted units to the Town and the Fire District; 4) Amend the PUD monument sign requirements; 5) Amend the community benefit requirements of the PUD to remove the requirement to build and dedicate 1,200 square feet on Block 8 to the Town in exchange for the Town to receive credit towards the purchase of affordable housing units; 6) Remove the reverter condition on a portion of the Block 2 Parking Lot; 7) Amend the requirements related to the Block 2 parking garage; 8) Remove the requirements for alleys on the remaining blocks; and 9) Request Confirmation of compliance with the Parkland Dedication Requirements.

C. The Technical Review Committee ("TRC") considered the application at TRC Meetings. The TRC recommended that the Planning and Zoning Commission recommend to the Town Council that it approve the amendments contained in the Application subject to certain conditions and modifications. The TRC made a finding pursuant to Section 1.11 of the PUD Control Document that the Application must proceed as a "two-step" amendment.

Please return to:  
TOWN OF BASALT  
101 Midland Avenue  
Basalt, CO 81621

D. At a public meeting on November 3, 2015 and a duly-noticed public hearing on November 17, 2015, the Planning and Zoning Commission considered the application and voted to recommend to the Town Council that it approve the amendments contained in the Application subject to certain conditions and modifications.

E. At a public hearing on December 8, 2015, the Council considered this Ordinance on first reading, and continued and set the public hearing and second reading for this Ordinance for January 12, 2016, for a meeting beginning no earlier than 6:00 pm at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado.

F. At a public hearing and second reading scheduled for January 12, 2016, the Town Council heard evidence and testimony as offered by the Town Staff, the Developer and members of the public.

G. The Town Council finds and determines it is in the best interests of the Town to approve this Ordinance. The Town Council finds and determines that the approvals contained in this Ordinance are consistent with the Town Code and the Amended and Restated PUD Control Document for WTC. Further, the Town Council finds and determines this Ordinance is reasonably necessary to promote the legitimate public purposes of the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of Basalt, Colorado, that, based on the Application, reports, evidence, testimony, exhibits and comments from the public, Applicant and Town staff, it hereby makes the following findings of fact and grants the following approvals for the Willits Town Center Planned Unit Development.

**A. FINDINGS OF FACT.** The Town Council conclusively makes and adopts the findings and conclusions set forth above and below.

1. The Application is appropriate for review as a two-step review.
2. The amendments as approved by this ordinance are in general conformity with the intent and purposes of the Development Plan for WTC, as amended.
3. The amendments as included in this ordinance reasonably conform to the intent and purposes of the Basalt Master Plan.

4. Any variations from Town Code or amendments to the Development Plan approved by this Ordinance are designed to accomplish the purposes of planned unit developments as described in the Town Code.

5. The amendments to the Development Plan as approved by this Ordinance will compliment and be integrated into the existing development in the area and particularly within WTC.

6. The amendments to the Development Plan as approved by this Ordinance will not have an adverse environmental impact, excessively increase traffic hazards or congestion, overload utilities or otherwise be detrimental to the general welfare of the community and to the WTC and will not affect in a substantially adverse manner either the enjoyment of land abutting on or across the street from the WTC or the public interest.

7. In accordance with § 24-67-106(3) (b), C.R.S., the modifications, removal or releases as approved by this Ordinance are consistent with the efficient development and preservation of the entire planned unit development, do not affect in a substantially adverse manner either the enjoyment of land abutting upon or across the street from the planned unit developer or the public interest and are not granted solely to confer a special benefit on any person.

8. The approvals granted herein by the Town are in accordance with CRS 38-12-301, regarding rental housing. The Developer is voluntarily agreeing to the provisions included in the amendments to the WTC approval documents as included in this ordinance.

9. Based on information provided by the Mid-Valley Metropolitan District, upon compliance with the conditions contained herein, there is adequate water supply to accommodate the development pursuant to C.C.R. 29-2--301.

10. It is in the best interests of the citizens of the Town of Basalt that the Application be approved as described in this Ordinance.

**B. APPROVAL AND CONDITIONS OF APPROVAL.** The Town Council hereby approves the amendments to the Approval Documents as described in the Application and in order to effectuate the amendment request described in Recital B above subject to the following conditions.

1. The approvals granted hereby are specifically conditioned on and subject to compliance with the conditions included in the attached **Exhibit A** and **Exhibit B**

incorporated herein by this reference. Interpretations of the provisions of this ordinance shall be governed by the parameters of Section 1.11 of the Amended and Restated Willits Town Center PUD Control Document (WTC PUD).

2. The Mayor of the Town of Basalt and the Town Clerk are hereby authorized to affirm the approval of the Town Council by signing and delivery for recording an amended PUD control document for Willits Town Center consistent with the purposes and intent of this Ordinance (including as set forth in the Recitals and Exhibits, and consistent with Ordinances of the Town related to WTC approved by the Town Council subsequent to the date of the existing WTC PUD) subject to the prior review and approval by the Town Attorney.

3. The Mayor of the Town of Basalt and the Town Clerk are hereby authorized to implement the approval of the Town Council by signing and delivering for recording a revised plat ("Fourth Amended Plat") and a Bargain and Sale Deed releasing the right of reverter on the Block 2 parking area, as determined necessary by the Town Attorney to reflect the approvals and conditions approved by this Ordinance after review by the TRC and the Town Attorney.

4. Prior to or simultaneous with the recording of the amended PUD control document, the Developer and the Town shall execute and deliver for recording amendments or supplements to the WTC Approval Documents to satisfy compliance with the conditions of approval included in this Ordinance. After approval by the Town Attorney, the Mayor and Town Clerk are hereby authorized to execute and deliver any additional amendments to the WTC Approval Documents reasonably necessary to accomplish the purposes and intents of this Ordinance.

5. The Fourth Amended Plat approved hereby includes removing the Government/Transit Tract designation from Block 8 as shown on the Second Amended Final Plan and Zone District Map. By authorizing execution of the Fourth Amended Plat and by the adoption of this Ordinance, the Town is specifically authorizing the conveyance of property interests to the Applicant in such manner as determined by the Town Attorney. Pursuant to Section 1.3(G), Town Charter, the Town Council by Ordinance may authorize the transfer of Town-owned property interests. The conveyances shall occur prior to or concurrent with the Filing for Block 8. *(Note: this condition may change depending on the Council's action on the conditions included in Exhibit A on the 1,200 square feet core and shell space and action on the reverter).*

6. The PUD Control Document included approval of "Plans and Specifications" as defined at Section 1.10(n) thereof. To accommodate the amendments approved hereby.

The Applicant shall submit amended Plans and Specifications consistent with the conditions included herein for review and approval by the TRC and the Mid-Valley Metropolitan District before filing the amended PUD control document.

7. This Ordinance, after fully executed, shall be recorded in the office of the Clerk and Recorder of Eagle County, Colorado.

8. In the event that the Applicant and Town Attorney are not able to reach agreement on one or more of the documents approved herein, it shall be brought to the Town Council at a regular or special meeting to review the final terms and conditions thereof.

9. The approvals and conditions contained herein shall be binding on and inure to the benefit of the heirs, successors and assigns of the Applicant and the owners of the Property.

10. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON DECEMBER 8, 2015, by a vote of 4 to 2 on December 8, 2015.

READ ON SECOND READING AND ADOPTED, by a vote of 5 to 2 on January 12, 2016.

TOWN OF BASALT, COLORADO

By: \_\_\_\_\_  
Jacque R. Whitsitt, Mayor

ATTEST:

\_\_\_\_\_  
Pamela Schilling, Town Clerk

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Effective Date: Thursday, February 4, 2016

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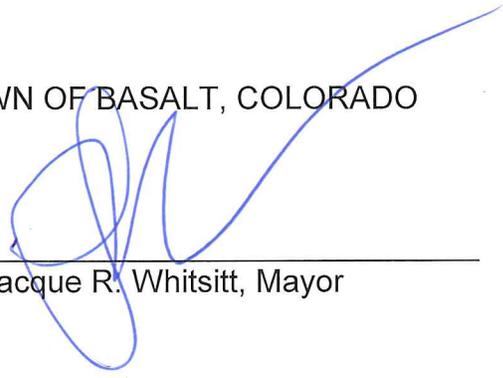
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TOWN OF BASALT, COLORADO

By:   
\_\_\_\_\_  
Jacquie R. Whitsitt, Mayor

ATTEST:

  
\_\_\_\_\_  
Pamela Schilling, Town Clerk

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## Exhibit A

### **Representations:**

1. The Developer shall comply with all representations set forth in the Application.
2. The Developer shall comply with all material representations made in hearings before the Planning and Zoning Commission (P&Z) and Town Council.

### **Development Program and Increase in Square Footage:**

3. The request for additional residential and commercial square footage is approved subject to the following:
  - A. Block 4 and 9 will each have a minimum square footage of 10,000 S.F. of commercial. No free-market residential square footage is permitted to receive a building permit on Block 4 and 9 unless the minimum square feet of commercial has received a building permit before or concurrent with the free-market residential construction.
  - B. Resident Occupied (RO) housing is not approved for any affordable housing mitigation required by this approval or on Block 7. The PUD document shall also be amended to eliminate the provision whereby RO housing is not counted toward the maximum floor area restrictions.
  - C. No more than 100 additional free-market residential units may be constructed in the Willits Town Center Development. No new residential unit may be larger than 1,800 square feet in total floor area (not counting any garage space).
  - D. A site plan shall be submitted for any development on Block 3 for review and approval by the P&Z at a public hearing. The Developer may appeal the P&Z's decision to the Town Council.

### **4. Requirement for Public Parking Garage to be open to the public - Clarification of Ordinance No. 14, Series of 2014 Reverter for Original Government/Transit Tract:**

- A. The Town and the Developer shall execute the "Agreement Regarding Town of Basalt, Colorado, Ordinance No. 11, Series of 2014 and Ordinance No. 28, Series of 2015" substantially in the form as presented at the Council's January 12th meeting. The Town Attorney may approve minor changes that satisfy the intent of this ordinance.
- B. Background: By a Bargain and Sale Deed, dated November 8, 2011, recorded on November 9, 2011, in the real estate records of Eagle County, Colorado, as Instrument No. 201120954 (the "2011 Reverter Deed"), the Town conveyed to Willits Town Center, LLC, a Delaware limited liability

company (this entity is also the Developer, as that term is used in this Ordinance), the real property (hereinafter referred to as the "Reverter Tract") legally described as follows:

The Transit/Government Tract, Willits Town Center, according to the First Amended Final Plat and Zone District Map of Tract 1, Blocks 2, 6, and 8, Transit Tract, Government Tract, Public Parking Tract and a portion of Reed Street, Willits Town Center Planned Unit Development, recorded November 2, 2005, as Reception No. 935326 of the Eagle County, Colorado, records.

Section 1 of the Reverter Deed sets forth certain conditions (the "Reverter Conditions"), which, if not satisfied, provide the Town the possibility of requiring the owner of the Reverter Tract to convey the Reverter Tract to the Town (the "Possibility of Reverter"). The Possibility of Reverter is also described in Town of Basalt Ordinance No. 11, Series of 2010.

The Town forever waives, disclaims, quitclaims, and relinquishes all right, title, and interest arising with respect to the Possibility of Reverter. Upon request from the owner of the Reverter Tract, the Town agrees it will execute such additional instruments as may be required from time to time to evidence the waiver and relinquishment of the Possibility of Reverter.

#### **Signage:**

5. The proposed amendment to change the primary monument sign size allowance along Highway 82 to 270 square feet per face is not approved. Instead, the primary monument sign shall be permitted to be 180 square feet per face and up to 11.5 feet tall. The amendment to include a maximum of four (4) tenant names, one of which may be the hotel, per sign face on the primary monument sign is approved. Any lighting for the monument sign shall be downcast and satisfy the Town lighting code requirements. The Town has the option of switching the Town message board and the Performing Arts Center Message Board signs.

#### **Affordable Housing Requirements:**

6. The Developer's affordable housing plan is included in **Exhibit B** of this Ordinance and is approved with the following amendments and clarifications.
  - A. The additional 59,583 square feet of commercial development result in a requirement in 19,153 square feet of additional affordable housing ("Additional Affordable Housing") as shown on **Exhibit B**. The Town's Community Housing Livability and Occupancy requirements in the Town's Community Housing Guidelines will apply to all affordable housing being constructed in Willits Town Center. The Additional Affordable Housing units are required to be provided at the Category 2 prices as required by the Town Code for mixed-use development except for:

- i. The 7,600 square feet of the Additional Affordable Housing“ ( $\pm$  8 units) as shown on **Exhibit B** to be built on Block 7 may use the prior higher sale prices to be consistent with the other 6 affordable housing units being constructed to satisfy prior AH commitments);
    - ii. The parking provisions outlined below in subparagraph B.
  - B. The financial allowance for the Developer to add some cost to the sale or rental price of affordable housing units per the provisions of Conditions 5 and 10 of Exhibit C of Ordinance No. 11, Series of 2010 for the construction of structured or underground parking remains in effect with the following amendments:
    - i. Block 7 parking provisions remain unchanged.
    - ii. For sale units, the maximum allowance for an entirely underground parking space may increase to \$20,000 per space. For rental units, the maximum additional monthly rent for an entirely underground parking space may increase to \$130. After January 1, 2017, such prices and rents may increase 3% per year compounding annually.
    - iii. If structured or underground parking is not provided for the affordable housing unit, then the parking requirement for free-market units shall apply.
  - C. If the Town or Fire District determines not to purchase the 4 units in South Block 7 required under existing approvals to be offered by the Developer, units will continue to be offered to the Town and District in the next blocks with residential housing units per the current approvals.
  - D. The units to be made available for purchase by the School District, the Town, and the Fire District will count toward the prior PUD Affordable Housing requirements and the requirements calculated under this PUD amendment application and included in **Exhibit B** of this ordinance. The Town Attorney shall be authorized to modify the Town’s standard deed restriction to meet the needs of these entities should they purchase the affordable housing units.
  - E. The certificates of occupancy for the affordable housing units attributable to the increase in square footage permitted by this PUD amendment shall be provided no later than the first of:
    - i. Prior to or concurrent with the certificates of occupancy for the commercial or residential development that would trigger the affordable housing mitigation requirement.
    - ii. Before the filing of the 12<sup>th</sup> plat (as required under current approvals).
  - F. All affordable housing units required under this approval shall be deed restricted as sales units. Notwithstanding the foregoing, if an individual building with free-market units, where all of the units are for rent, also includes affordable housing units, then the deed restricted units within such building may be converted to rental units. In addition the Special Housing Evaluation Committee may also grant approval for the housing units to be rental based on the current needs of the Town.
  - G. The Developer must execute appropriate deed restrictions applicable to all affordable housing units.

7. The Town Council hereby extends the deadline included in Condition 7C, of Exhibit E of Ordinance No. 11, Series of 2010 to July 1, 2017. Condition 7 relates to Developer's obligation to design, engineer, and construct a 1,200 square foot transit/government building on Block 8 of the Willits Town Center PUD and to convey to the Town a portion of Block 8 and the "Transit Parcel". For the avoidance of doubt, Town and Developer acknowledge and confirm that Developer's obligation to convey to the Town a portion of Block 8 and the "Transit Parcel" is limited to Block 8, as it is legally described below.

2<sup>nd</sup> Amended Block 8/Transit/Government Tract, according to the Second Amended Final Plat and Zone District Map of: Lot 3, Block 1, Amended Tract 1, Amended Blocks 2, 6, and 8, Block 12, Transit/Government Tract, Amended Public Parking Tract, Amended Reed Street and a Portion of Grange Street, Willits Town Center PUD, according to the Plat thereof recorded November 9, 2011 at Reception No. [201120959](#), County of Eagle, State of Colorado.

**Design Guidelines:**

8. This approval authorizes the TRC to grant waivers to the design guidelines for maximum building size on Blocks 4, 9 and 11 provided the TRC finds that the following is satisfied:
  - A. The development on each of Blocks 3, 4, 9 and 11 is provided with sufficient fenestration, use of different colors, materials and detail that it appears that the PUD maximum building size specified in Section 3.2 of the PUD Control document is met. Regardless, no one commercial first floor use on these blocks shall exceed 27,000 square feet unless permitted by one-step review or the use is a hotel per the current PUD requirements.
  - B. Residential development facing Pioneer Street or Lewis Lane does not have to follow the PUD design requirement that residential on the first floor be designed to allow for conversion to commercial uses. However before permit on any of these blocks, the design guidelines shall be amended as provided by Condition No. 14 of Ordinance No. 11, Series of 2014.
  - C. The new buildings on Block 4, 9 and 11 shall be built so that the portion of the block devoted to commercial use on the first floor shall face commercial development across the street on Robinson Street and Reed Street as determined by the TRC.
  - D. The Design Guidelines shall be amended to address appropriate landscaping and/or screening for on-grade parking lots that provides for safety while creating an attractive street and pedestrian experience along the sidewalks and streets in Willits Town Center.
9. The alleys shown on the plat for Blocks 4, 9 and 11 are hereby vacated provided that the Developer:

- A. Provides at least 2 additional pocket parks, where the total new pocket park square footage required is 5,000 square feet. Such pocket parks shall be adjacent to a private or public street and shall include play features suitable for small children. The additional pocket parks shall be privately maintained and may be restricted to residents of Willits Town Center, unless publicly dedicated. Each pocket park shall be a minimum of 1,000 square feet.
  - B. Each of Blocks 3, 4, 9, and 11 shall be provided with a loading area of a size to be approved by TRC.
10. The Developer shall fund a portion of the replacement of the current traffic calming devices located on East Valley Road by paying for two of three red concrete pedestrian tables to be installed in place of the current East Valley Road traffic-calming devices. The Developer shall reimburse the Town upon delivery of an invoice from the Town. Alternatively, at any time before the Town gives a notice to proceed for the Town's construction of the pedestrian tables, the Developer may provide notice to the Town that the Developer chooses to construct the two tables, at which time the Developer shall submit construction plans for the Town's review and approval and complete construction of the tables within 9 months of the Developer's notice. For clarity, the Town desires pedestrian tables such as the ones built on East Valley Road near the El Jebel BRT station.

**Parking and Traffic:**

11. The Developer shall provide off-street parking at a rate of 2.0 spaces for each two-bedroom free market unit instead of the 1.5 parking spaces required under the current PUD.
12. As recommended by the Colorado Department of Transportation, in the letter to Susan Philp, dated December 1, 2015, the Developer shall obtain a new Highway 82 access permit on behalf of the Town and install fiber optic cable in order to coordinate the traffic signals on State Highway 82. The Developer shall only be responsible for coordinating the El Jebel Road and Willits Lane signal (leaving the coordination with Willis Lane and Original Road to be done by others). The Developer is required to obtain the access permit before filing the plats for three more Blocks after Block 7 is filed, and to secure the improvement and complete construction no later than issuance of the first certificate of occupancy on the Third block filing. The Town agrees to seek other funding and will work with the Developer to expedite the improvement. Upon the written request of the Developer, to be made no later than the recording of the plat for the second block after Block 7 is filed, the Town will prepare the access permit application, and the Town will be responsible for the construction of such improvements. In that event, the Developer shall be required to reimburse the Town for all of its expenses and may be required by the Town to provide financial security for this obligation.

13. The Developer shall make a one-time capital contribution of \$60,000 toward We-cycle locations in and near Willits Town Center, which shall be due 30 days after being invoiced by Town of Basalt, and amend the Master Association Covenants to provide a contribution of \$10,000 per year for three years, beginning the first year a We-cycle station is installed at Willits Town Center.
14. The Developer shall comply with the Transportation Demand Management Program (TDM) for Willits Town Center as outlined in the document prepared by Felsburg Holt & Ullevig dated January 8, 2016 and included as **Exhibit C**. A TDM status report and any recommendations shall be submitted by the Developer to the Town Planner for review and approval before each plat filing after Block 7 and before certificate of occupancy for any building on the final plat which is filed to ensure compliance.

**Parks and Daycare:**

15. The Town Staff made a determination that the parkland dedication and improvement requirements in Willits Town Center and Sopris Meadows are sufficient to satisfy the park requirements for the development provided the Developer adheres to the private open space requirements and pocket park requirements outlined in these conditions. For clarification, the Town's private open space requirement of 150 square foot per first floor unit and 50 square feet per upper floor unit shall be provided for each dwelling unit constructed within Willits Town Center.
16. At building permit, each new free-market dwelling unit shall pay a daycare impact fee of the following for land acquisition and construction of a daycare facility in or near Willits Town Center:

|  |                |
|--|----------------|
| <i>Dwelling Unit of 749 SF and less</i>    | <i>\$ 0</i>    |
| <i>Dwelling Unit of 750-999 SF</i>         | <i>\$2,220</i> |
| <i>Dwelling Unit of 1,000 SF or larger</i> | <i>\$4,424</i> |

**Snow Storage:**

17. The current snow storage plan is out of date. As the Developer did not submit one with the application, a snow storage plan shall be submitted no later than the first building permit submittal after the issuance of a building permit on Block 7 North. The snow storage plan shall require review and approval by the Public Works Director.

## **Construction Management**

18. A construction management plan must be submitted by the Developer with each building permit per the current PUD approvals. The next construction management plan submitted to the Town after the Block 7 filing must include at a minimum the following:
  - A. Additional requirements to ensure that the contractor does not track dirt on Town Streets and the Willits Trail.
  - B. Reduction of the visual impacts of the dirt piles located off of Pioneer Street. This requires that the Developer will either:
    - i. Construct a 6-foot cedar fence, plant vegetation and provide temporary irrigation on the portions of the piles which are not actively being used for construction; or
    - ii. Move the dirt into one of the "holes" on Block 4 or Block 9, plant vegetation and provide temporary irrigation.
  - ii. In no event shall the dirt piles exceed 10 feet in height as measured from the Willits Lane Trail
  - C. No additional material may be added to the piles from areas outside of Willits Town Center, unless the Developer receives permission from the Town.
  - D. In order to reduce construction traffic and reduce costs, the Town will allow the Developer to maintain the existing dirt piles on the site provided that the material is being used for the construction of Willits Town Center and not for other developments and that the Developer adequately addresses the visual and construction impacts.

## **Final Approval Documents and Other Legal:**

19. The documents required by this approval shall be approved by the Town Attorney, executed by the Developer, and recorded into the public records before the earlier of a construction permit being issued for Blocks 3, 4, 9 or 11 or within 180 days of the effective date of this ordinance. All documents that have not been brought into compliance with current approvals are included in this requirement.
20. Before any construction permit is issued, the Developer shall have an indemnification agreement and maintain it while any construction work is occurring for Developer work on Town property until the project is built out and the responsibilities for "Developer" under the PUD are extinguished.
21. The Town's approval for the 91,000 square feet of additional floor area shall expire if the approval documents required herein are not executed by the filing deadlines or a building permit is not issued for commercial floor area on one of Blocks 3, 4, 9, or 11 within three (3) years from the effective date of this ordinance.
22. The Developer shall comply with all other conditions of the prior approvals except as modified herein.

23. The Developer shall amend the approval notebook(s) required by the original approvals or provide digital notebooks to bring them into compliance with this approval and prior approvals, within 180 days from the effective date of this approval. The Developer shall prepare a digital version of the notebook for use by all the parties. The above requirement is permitted to be waived or delayed by the Town Planner.

**Minor Amendments:**

- 24 The TRC may review and approve minor amendments to the approval documents necessary to effectuate the intent of the final development approvals, or to make improvements to the design of the project.