

CITY OF BURIEN, WASHINGTON

RESOLUTION NO. 334

A RESOLUTION OF THE CITY OF BURIEN, WASHINGTON, AUTHORIZING THE CITY MANAGER TO PROVIDE WRITTEN NOTICE, TO THE OWNER/DEVELOPER OF PARCELS IV, V, AND VI OF THE TOWN SQUARE DEVELOPMENT SITE, OF THE CITY'S INTENT TO EXERCISE ITS RIGHT TO REPURCHASE SAID PARCELS PURSUANT TO SECTION 23.2.3 OF THE JUNE 29, 2005 DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY AND THE OWNER/DEVELOPER.

WHEREAS, since incorporation of the City of Burien in 1993, the City in its Community Vision, Comprehensive Plan, and Downtown Master Plan has adopted and implemented a policy and work program of revitalizing the City's central commercial area and providing a place to be developed and used as a city center known as the "Town Square"; and

WHEREAS, the City Council adopted a conceptual framework for the Town Square and Downtown Master Plan, and authorized City staff to proceed with implementation of the effort to revitalize Burien's core downtown business area, including land acquisition for the purpose of developing the Town Square and attracting re-development of housing, professional office space, and mixed-use retail space in the downtown; and

WHEREAS, in 2002, the City purchased the Town Square property at fair market value of \$4,050,000 and subsequently invested significant public resources in constructing and maintaining transportation and park facilities in the Town Square; and

WHEREAS, following a Request for Qualifications process, the City, on December 21, 2007, sold the Town Square property consisting of Parcels I, IV, V, and VI ("Town Square Development Site") to Urban Ventures Burien, LLC ("Owner/Developer"), at fair market value of \$4,666,016 pursuant to a Disposition and Development Agreement, which was initially entered into and dated June 29, 2005 and which has subsequently been amended by Amendments Nos. 1-7 ("DDA"); and

WHEREAS, the DDA establishes clear and definite requirements that, once the City conveyed the Parcels to the Owner/Developer, the Owner/Developer would commence and complete the "Private Development Projects" on the Town Square Development Site in a timely manner; and

WHEREAS, the DDA allows for the development of the Private Development Projects in phases, but places the following strict time limits on when the Owner/Developer must complete all of the phases:

In the event Developer develops the Property in phases, Developer ... must commence construction of each subsequent Phase within two (2) years following Substantial Completion of the previous Phase. Once construction of any Phase commences, Developer shall thereafter diligently and continuously prosecute construction of such Phase so as to achieve Substantial Completion of the applicable Phase within three (3) years following commencement of construction (“Substantial Completion Date”) ...

(DDA, Section 13.1); and

WHEREAS, Owner/Developer chose to develop the Property in Phases, substantially completed the first Phase on July 21, 2009, and was required to commence construction of the next Phase on or before July 21, 2011; and, further, Owner/Developer did not meet that deadline, has not since commenced construction of the next Phase, and has communicated to the City no actual plan to commence construction any time soon; and

WHEREAS, there has been no “Unavoidable Delay”, defined at Section 13.2 of the DDA as: “...strikes, riots and judicial and/or regulatory actions by federal, state or local governmental agencies that enjoin or delay construction on the Town Square Site, the Property or any Parcel thereof, acts of God, war or acts of terrorism that delay construction of the applicable Phase of the Private Development Project”, to excuse Owner/Developer’s delays and changes in the Project Schedule, and the mere fact that performance of Owner/Developer’s obligation to commence construction of the next Phase within two years of substantial completion of the prior Phase may have become more difficult or expensive than originally anticipated does not excuse Owner/Developer’s failure to perform; and

WHEREAS, the DDA identifies express “Events of Default” for Owner/Developer’s failure to commence construction of any Phase in a timely manner (Section 23.1.6) or to complete construction of any Phase within three years of commencement of construction (Section 23.1.7) and provides the following cumulative, non-exclusive remedies to the City for such Owner/Developer defaults: if Owner/Developer fails to timely commence construction of any Phase, Section 23.2.3 grants the City the right (in addition to all other available remedies including termination of the DDA, damages and specific performance) to repurchase the Parcels, and if Owner/Developer fails to timely complete any Phase, Section 23.2.2 allows the City the right (again in addition to all other available remedies including termination of the DDA, damages and specific performance) to exercise its Right of Reverter and regain fee ownership of the Property; and

WHEREAS, after extensive dialog with Owner/Developer, commencing well before the July 2011 construction commencement deadline and continuing until recently, the City has

determined that Owner/Developer is no longer able or willing to meet its obligations under the DDA; and

WHEREAS, on April 30, 2012, the City issued a formal written notice to Owner/Developer that, because Owner/Developer had failed to commence construction of the next Phase of the project within two years of substantially completing the prior Phase, an Event of Default pursuant to Section 23.1.6 of the DDA had occurred; and

WHEREAS, the City has determined that it is necessary and appropriate, in order to realize the public purpose of the Town Square project that was the objective of the DDA, to exercise its right under Section 23.2.3 of the DDA to repurchase the remaining undeveloped Parcels IV, V, and VI of the Town Square Development Site; and

WHEREAS, the City intends, upon repurchasing the Parcels, to seek a new developer to implement the Town Square Development project by conducting a new Request for Qualifications process to identify the appropriate developer and to negotiate a new agreement with the selected developer, pursuant to which the City will convey the Parcels to the new developer and the new developer shall implement the project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. Legislative Findings. Based upon the public comments received, the report and recommendation provided by City staff and the exhibits, records and documents before it, the Council makes the following findings:

- 1.1 All of the recitals set forth above are adopted as findings.
- 1.2 The Repurchase Price of Parcels IV, V and VI of the Town Square Development Site, as established in the DDA (90% of the price paid by the Owner/Developer), is Two Million Five-Hundred Ninety-Four Thousand One Hundred Dollars (\$2,594,100). The values assigned to each parcel are: Parcel IV: \$966,386; Parcel V: \$1,368,949; Parcel VI: \$258,765.
- 1.3 Owner/Developer has indicated that it is not willing to sell the Parcels back to the City for the Repurchase Price voluntarily and has publically marketed the Parcels for sale at a substantially higher amount.
- 1.4 The Repurchase Price is an appropriate and reasonable amount to pay Owner/Developer for the Parcels in order for the City to regain control of the Parcels without litigation and to accomplish and realize the intended public purposes of the Town Square Development Project.

Section 2. Authorization. The City Manager is hereby authorized to provide written notice, to the Owner/Developer of Parcels IV, V, and VI of the Town Square Development Site, of the City's intent to exercise its right to repurchase said Parcels pursuant to Section 23.2.3 of the DDA.

Section 3. Effective Date. This resolution shall take effect immediately upon passage by the Burien City Council.

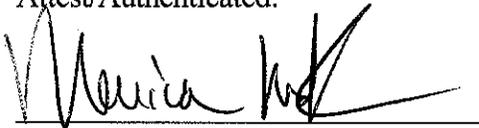
ADOPTED BY THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, AT A REGULAR MEETING THEREOF THIS 4th DAY OF JUNE, 2012.

CITY OF BURIEN



Brian Bennett, Mayor

Attest/Authenticated:



Monica Lusk, City Clerk

Approved as to form:



Craig D. Knutson, City Attorney

Filed with the City Clerk: May 30, 2012
Passed by the City Council: June 4, 2012
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