February 25, 2013

8. BUSINESS AGENDA

b. Discussion of and Possible Action on Proposed Harbor Urban Alternative Development for Town Square Including Available Options.

Attachments for Option 2.a.

An Alternate Resolution 341, the Purchase and Sale Agreement, and Amendment #8 to the DDA will be provided under separate cover.

CITY OF BURIEN, WASHINGTON

RESOLUTION NO. 341

A RESOLUTION OF THE CITY COUNCIL 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 ELECTION TO EXERCISE ITS RIGHTS REGARDING THE DISPOSITION OF SAID PARCELS AS SET FORTH IN THE ATTACHED EXHIBIT A.

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 thereafter, the City determined that Owner/Developer was 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 determined that it was 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, pursuant to Resolution 334, on June 8, 2012 the City notified Owner/Developer of its intent to exercise its Repurchase Right; and

WHEREAS, Owner/Developer asked the City to suspend its exercise of its Repurchase Right to allow Developer time to propose an alternate project through a modification of the Development Parameters and a new Project Schedule (the "Alternate Project") and the City was willing to consider Developer's proposal for an Alternate Project and the related, requisite amendments to the DDA, provided that, in the City's sole discretion and judgment, the City's interests in the DDA and in the Project – including its rights related to its exercise of its Repurchase Right – were not compromised and provided further that the City was assured that, in the City's sole discretion and judgment, that the City-desired development of the subsequent phases of the Project – by Developer pursuant to an amended DDA or by a third party following the City's repurchase – was not unreasonably delayed; and

WHEREAS, in order to suspend the DDA's requirement that the repurchase occur within 180 days of the City's notice on intent to repurchase, the City and Owner/Developer entered into a Standstill Agreement dated August 15, 2012 and amended on November 8, 2012, in which the parties agreed to suspend the repurchase process and agreed upon a specific process under which Owner/Devloper would propose and the City would consider an "Alternate Project"; and

WHEREAS, under said process, Owner/Developer was to produce and deliver to the City Manager certain "Deliverables", the City Manager was to review the Deliverables, and if he did not approve them "in his sole discretion", he was to provide Owner/Developer with his comments "on matters to which he objects" and Owner/Developer was then to revise and resubmit the Deliverables to respond to the City's objections; and

WHEREAS, the Standstill Agreement further provides, "This process will be repeated until the City Manager is prepared to recommend the Alternate Project, as described by the Deliverables, for approval to the City Council, at which time the City Council will consider formal approval of the Alternate Project, and the City Council may accept or reject the Alternate Project as recommended by the City Manager in its sole discretion and judgment;" and

WHEREAS, the Standstill Agreement further provides that if the City Council has not approved the Alternate Project as recommended by the City Manager by November 15, 2012, then the City may send the Owner/Developer the Standstill Termination Notice; and

WHEREAS, the Standstill Agreement further provides that if the Developer and the City do not agree to amend the DDA as a result of the process established in the Standstill Agreement and the City sends Harbor Urban a "Standstill Termination Notice", then the City has three specific alternate paths: (i) withdraw its Notice of Intent to Repurchase the Property and have another year to reissue it; (ii) direct Harbor Urban to sell the Property to the City; or (iii) direct Harbor Urban to sell the Property to a City-designated third party; and

WHEREAS the time periods for completing the repurchase of the Property initiated when the City sent the June 8, 2012 Notice of Intent to Repurchase begin to run again on the earlier of the date of the Standstill Termination Notice or March 1, 2013 and, unless the City exercises one of the options above, under the DDA, the City must purchase and Harbor Urban must sell the Property; and

WHEREAS, after conducting this process with Owner/Developer under the Standstill Agreement in good faith, the City Manager sent Owner/Developer a letter on February 5, 2013 indicating that, subject to resolving a few loose ends, including uncertainties surrounding a proposed Zoning Code Amendment, he was prepared to recommend to the City Council, for action at its February 25, 2013 meeting, approval of the Alternate Project reflected in the draft Eighth Amendment to the DDA enclosed with that letter, as had been negotiated by the representatives of Owner/Developer and the City, and asked that Owner/Developer confirm its willingness to execute the proposed DDA Amendment; and

WHEREAS, following receipt of the City Manager's February 5, 2013 letter, Owner/Developer communicated to the City Manager that it was not willing to execute the proposed DDA Amendment and was not willing to go forward with the described Alternate Project; and

WHEREAS, because Harbor Urban withdrew its support for the negotiated agreement, there is no Alternate Project for the City Manager to recommend to the City Council as provided in the Standstill Agreement; and

WHEREAS, one of the Standstill Agreement's specific remedies if the City elects not to approve the Alternate Project provides for the City to direct Harbor Urban to sell Parcels IV, V, and VI to a third party, and the City has received a proposal from Legacy Partners Residential LLC ("Legacy") to acquire and redevelop the Parcels; and

WHEREAS, Legacy is a long-established and experienced developer of urban mixed-use projects similar to that envisioned by the City for Town Square and Legacy has demonstrated its financial capacity to carry out such projects; and

WHEREAS, the Alternate Project for Parcels IV, V and VI described in the Agreement to Purchase Real Estate and Accept Assignment of Disposition and Development Agreement (the "Legacy Agreement") would accomplish the goals established by the City for the continued redevelopment of Town Square;

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

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

1.1 All of the recitals set forth above are adopted as findings.

1.2 As set forth above, Owner/Developer has indicated that it is not willing to execute an Amendment to the DDA and is not willing to go forward with the Alternate Project.

1.3 Based on the above findings, it is in the public interest for the City Council to exercise the City's rights under the DDA and the Standstill agreement by directing the City Manager to provide the written notice set forth in the attached Exhibit A.

1.4 Based on the above findings, it is in the public interest for the City to enter into and carry out the Legacy Agreement, substantially in the form attached hereto as Exhibit B, and the Assignment of the DDA and the Eighth Amendment to the DDA substantially in the forms included in the Legacy Agreement.

Section 2. Authorization to Send Standstill Termination Notice. The City Manager is hereby authorized and directed to provide written notice to the Owner/Developer of Parcels IV, V, and VI of the Town Square Development Site regarding the disposition of said Parcels as set forth in Exhibit A, which is attached hereto and incorporated herein by this reference.

Section 3. Authorization to Execute Legacy Agreement, Assignment of DDA and Eighth Amendment to DDA. The City Manager is hereby authorized and directed to execute the Legacy Agreement, substantially in the form attached hereto as Exhibit B, and the Assignment of the DDA and the Eighth Amendment to the DDA substantially in the forms included in the Legacy Agreement.

Section4. 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 25th DAY OF FEBRUARY, 2013.

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: February 20, 2013
Passed by the City Council: February 25, 2013
Resolution No. 340

AGREEMENT TO PURCHASE REAL ESTATE AND ACCEPT ASSIGNMENT OF DISPOSITION AND DEVELOPMENT AGREEMENT

This Agreement to Purchase Real Estate and Accept Assignment of Disposition and Development Agreement is made as of February __, 2013 by and between The City of Burien, an optional municipal code city of the State of Washington ("City") and Legacy Partners Residential LLC, a Delaware limited liability company ("Legacy").

BACKGROUND

A. City and the predecessor of RECP/UP BURIEN II, LP, a Washington limited partnership ("Harbor Urban") entered into the Disposition and Development Agreement, dated as of June 29, 2005 and subsequently amended, (the "DDA") governing the development of certain properties in the center of the City of Burien known as Burien Town Square. Unless otherwise expressly defined herein, capitalized terms used in this Agreement shall have the same meanings as set forth in the DDA.

B. The DDA calls for Harbor Urban to develop the Town Square Project in accordance with the Development Parameters set forth in Exhibit C-1 to the DDA.

C. The DDA allows the Harbor Urban to choose to develop the Town Square Project in Phases, but requires the Harbor Urban to commence construction of a subsequent Phase within two years of substantial completion of a prior Phase.

D. If Harbor Urban fails to timely commence construction of any Phase, Section 23.2.3 of the DDA 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 ("Repurchase Right").

E. Harbor Urban chose to develop in phases and substantially completed Phase I of the Town Square Project in July 2009. Harbor Urban has not commenced construction of any subsequent phase of the project.

F. The City notified Harbor Urban on April 30, 2012 that, because Harbor Urban had failed to timely commence construction of a subsequent phase of the Town Square project, an Event of Default had occurred under the DDA.

G. The City notified Harbor Urban on May 8, 2012 of its intent to exercise its Repurchase Right. The DDA requires the repurchase to occur within 180 days of this notice.

H. On August 15, 2012, City and Harbor Urban entered into a Standstill Agreement under which the City agreed to suspend until at least December 31, 2012 its exercise of its Repurchase Right pending completion of the Alternate Project (as such term is defined in the Standstill Agreement) review and approval process described in the Standstill Agreement. That process afforded Harbor Urban an opportunity to develop a proposal for an Alternate Project with certain agreed upon characteristics to be implemented upon a revised schedule and subject to certain to-be-proposed amendments to the DDA.

I. The Standstill Agreement provided that Harbor Urban would work with the City Manager to revise the Alternate Project until the City Manager determined that he could recommend the proposed Alternate Project to the City Council. If the City Council had not approved the Alternate Project by November 15, 2012, then the City could send Harbor Urban a Standstill Termination Notice.

J. If Harbor Urban and the City do not agree to amend the DDA as a result of the process established in the Standstill Agreement and the City sends Harbor Urban a Standstill Termination Notice, then the City may elect, in its sole discretion, to (i) withdraw its notice of intent to exercise its Repurchase Right (and the City shall have the right to issue it again within one year of the date of the Standstill Termination Notice); (ii) direct Harbor Urban to convey the Repurchase Parcels to the City for the Repurchase Price as provided in the DDA; or (iii) direct Harbor Urban to convey the Repurchase Parcels and assign its interest in the DDA to a third party selected by the City for a price equal to the greater of the Repurchase Price or the price negotiated by the City with the third party selected by the City ("Negotiated Third Party Price").

K. The Standstill Agreement further provides that unless the City elects option (i) above, then on or before thirty (30) days following the earlier of the City's sending a Standstill Termination Notice or December 31, 2012, Harbor Urban will either convey the Repurchase Parcels to the City or a City-selected third party as provided in the DDA and herein.

L. On November 8, 2012, City and Harbor Urban amended the Standstill Agreement to extend the date until which the City would suspend its exercise of its Repurchase Right from December 31, 2012 to March 1, 2013. By exchange of letters dated December 19, 2012, Harbor Urban and City confirmed that the Standstill Agreement Amendment also extended the last date by which the City could direct Harbor Urban to convey the property to the City or a third party was also March 1, 2013.

M. On February 25, 2013, the City Council duly considered and rejected the Alternate Project proposed by Harbor Urban.

N. Legacy is a national developer of urban, mixed-use projects similar to that contemplated in the DDA for Burien Town Square. Legacy has represented to the City that it has the wherewithal to undertake and complete the Retail/Housing Project described in the DDA, upon the schedule described in the DDA, as amended as set forth in the manner described in this Agreement (the "DDA Amendment"). The City has investigated Legacy's reputation and financial capacity to perform the DDA as designed, on budget and on schedule and, based upon Legacy's representations and the City's investigation, has determined that Legacy is an appropriate private partner for the Burien Town Square Project.

O. Legacy wishes to acquire the Property and to develop it subject to the terms and conditions of the DDA, as amended by the DDA Amendment.

P. City wishes to have Legacy or an Affiliate acquire the Property and develop it subject to the terms of the DDA, as amended by the DDA Amendment. As used herein, an "Affiliate" shall

mean an entity under common direct or indirect management control with Legacy, and any of Preston Butcher, W. Dean Henry, Guy K. Hays or Kerry Nicholson, individually or through a trust has a direct or indirect ownership interest therein. As used in this Agreement, the term "management control" means power to direct or cause the direction of management or policies (whether through ownership of voting interests or securities, by contract, or otherwise). On February 25, 2013, the City's City Council adopted Resolution No. 341 authorizing the City to send Harbor Urban a Standstill Termination Notice and to direct Harbor Urban to sell the Property to Legacy or its nominated Affiliate and authorizing the City Manager to execute this Agreement and the Eighth Amendment to the DDA substantially in the form attached hereto as Exhibit C.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties agree as follows:

1. City Shall Direct Harbor Urban to Sell Property to Legacy. City shall, pursuant to the Standstill Agreement, send Harbor Urban the Standstill Termination Notice and direct Harbor Urban to convey the Property to Legacy or Legacy's Affiliate.

2. Legacy Shall Purchase the Property from Harbor Urban. Legacy hereby agrees that Legacy or an Affiliate will purchase and accept from Harbor Urban, for the Purchase Price (hereinafter defined) and on and subject to the terms and conditions herein set forth the real property more fully described on Exhibit A (the **"Property"**).

3. Purchase Price. The total purchase price to be paid to Harbor Urban for the Property upon the transfer of the Property to Legacy or its Affiliate in accordance with the terms of this Agreement and Section 23.3.3 of the DDA (the **"Closing"**) is the sum of a) TWO MILLION FIVE HUNDRED NINETY FOUR THOUSAND ONE HUNDRED FIFTY FOUR DOLLARS ($2,594,154), plus b) an amount equal to the lesser of i) One Hundred Thousand Dollars and ii) the actual, reasonable third party costs incurred by Harbor Urban after June 27, 2012 to produce the Deliverables (as defined in the Standstill Agreement) (such sum being the **"Purchase Price"**). The City shall cause the Deposit (as defined below) to be credited against the Purchase Price paid in cash to Harbor Urban at Closing.

4. Earnest Money; Liquidated Damages. Legacy has heretofore delivered to Chicago Title Insurance Company ("Title Company") a certified or cashier's check payable to the order of Title Company in the amount of One Hundred Thousand Dollars ($100,000) or has deposited such amount by wire transfer. Title Company has deposited same in an interest bearing account. The funds so received by Title Company, and any interest earned thereon shall be held as an earnest money deposit, and are referred to herein as the "Deposit." The Deposit shall be held in escrow and delivered by the Title Company in accordance with the provisions hereof. If Legacy fails to timely deliver such Deposit then the City may terminate this Agreement and except for Legacy's indemnity obligation under Section 16, the parties shall have no further obligations or liability hereunder.

Time is of the essence of this Agreement. If Legacy or its Affiliate fails to complete the purchase of the Property as provided herein, without legal excuse (e.g., Harbor Urban's failure or inability to convey title pursuant hereto, a failure of a condition to Legacy's obligation to close hereunder or City's material breach of any of City's obligations hereunder), the Deposit shall be forfeited to City as the sole and exclusive remedy available to City for such failure to close under such circumstances, and in such event, Title Company, as closing escrow agent, is hereby instructed to deliver the Deposit to City. On receipt by City of the Deposit, this Agreement shall terminate and except for Legacy's indemnity obligation under Section 16, the parties shall have no further obligations or liability hereunder; provided, however, that the City may elect to retain for itself Legacy's right to acquire the Property from Harbor Urban provided to Legacy hereunder. Legacy and the City agree that in the event of Legacy's or its Affiliate's failure to complete the purchase of the Property, City shall retain the Deposit as liquidated damages and not as penalty, in order to indemnify the City against loss as a result of breach of this Agreement. It is agreed that damages that result to City include: freezing the purchase price at a time when real estate land values were escalating; compensating City for holding the Property off the market and losing the time value of the Property were the Property liquidated and funds invested; lost opportunity for greater benefits; and related costs. City and Legacy recognize a general measure of the damages to City is represented by the Deposit. It is further agreed that the damages that may result from a breach of this Agreement are uncertain and difficult to ascertain any more than City and Legacy have done, and that the agreed amount is a reasonable estimate of the probable damages to City.

5. Assignment and Amendment of the DDA. Legacy agrees that it or its Affiliate will accept assignment of the DDA from Harbor Urban at the Closing and, on and after Closing, to perform all of Developer's obligations thereunder subject to the terms of the DDA as amended by the DDA Amendment. Legacy shall execute, or shall cause its Affiliate to execute, an Assignment Agreement, substantially in the form attached hereto as Exhibit B at Closing. Legacy and City each also agree that at Closing, following conveyance of the Property and Assignment of the DDA, each (or Legacy's Affiliate, as appropriate) will execute an Eighth Amendment to the DDA substantially in the form attached hereto as Exhibit C.

6. Representations and Warranties

6.1 Legacy's Representations and Warranties. Legacy hereby makes the following representations and warranties to the City, which shall be deemed also made as of the Closing, and the remedies for breach thereof shall survive Closing:

6.1.1 Except for this Agreement, or as disclosed herein, Legacy has entered into no other purchase or commission agreement with respect to the Property.

6.1.2 Legacy now has sufficient available working capital in its own account to acquire the Property and has received substantial interest from financial institutions or sophisticated lenders or investors to provide sufficient capital to complete the Retail/Housing Project as provided in the DDA, as amended.

6.1.3 Legacy has not (a) made a general assignment for the benefit of creditors, (b) filed any voluntary petition or suffered the filing of an involuntary petition by Legacy's creditors, (c) suffered the appointment of a receiver to take all, or substantially all, of Legacy's assets, (d) suffered the attachment or other judicial seizure of all, or substantially all, of Legacy's assets, or (e) admitted in writing its inability to pay its debts as they fall due, and no such action is threatened or contemplated. If any of such actions have been taken or brought against Legacy, then prior to the date hereof the same have been fully disclosed and Legacy discharged therefrom so that there are no prohibitions or conditions upon Legacy's or its Affiliate's acquisition of the Property.

6.1.4 Neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated by this Agreement will result (either immediately or after the passage of time and/or the giving of notice) in breach or default by Legacy under any agreement or understanding to which Legacy is a party or by which Legacy may be bound or which would have an effect upon Legacy's ability to fully perform its obligations under this Agreement.

6.1.5 All requisite action has been taken by Legacy in connection with entering into this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby. Legacy has the right, power and authority to execute, deliver and perform this Agreement without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties. This Agreement, when executed and delivered by City and Legacy, and all documents executed by Legacy pursuant hereto, will constitute the valid and binding agreement of Legacy.

6.1.6 The persons executing this Agreement and the documents contemplated hereby on behalf of Legacy have the power and authority to bind Legacy.

6.1.7 Legacy, without otherwise diminishing or affecting Legacy's promise to accept and fully perform or to cause its Affiliate to accept and fully perform the obligations of Developer under the DDA, but for the sake of clarity, expressly confirms that it also makes on behalf of Legacy, or its Affiliate, as applicable, as Developer, the following representations of Developer under Section 19.2 of the DDA (as used below, "this Agreement" refers to the DDA and "the date of this Agreement" refers to the date of the Assignment Agreement assigning the DDA to Legacy):

19.2 Developer Representations.

19.2.1 Developer is a legal entity duly organized and validly existing under the laws of its formation, duly authorized to conduct business in the State of Washington and has the power to own its property and carry on its business as now being conducted. All requisite action on the part of Developer and all corporate or other action on the part of its managers and members necessary for the authorization, execution, delivery and performance of this Agreement have been duly taken. Developer has full power and authority to enter into, execute and deliver this Agreement and to perform its obligations under this Agreement.

19.2.2 This Agreement when executed and delivered by Developer, and assuming it has been duly authorized, executed and delivered by City, will, as of the date of this Agreement, be the legal, valid and binding agreement of Developer, enforceable in accordance with its terms, except to the extent that the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws, affecting the rights of creditors generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

19.2.3 No consent, approval, permission, authorization, order or license of any person or of any Governmental Body (except for City approval of Schematic Design Documents and Building Permit Documents for the Private Development Projects and issuance of building permits necessary for construction) is necessary in connection with the execution, delivery and performance of this Agreement by Developer or any transaction contemplated hereby, except as may have already been obtained by Developer prior to the date of this Agreement. There is no provision in Developer's certificate of formation or organizational documents nor any provision in the organizational documents of any member or manager of Developer which would be contravened by the execution and delivery of this Agreement or by the performance of any provision, condition, covenant or other term required to be performed by Developer under this Agreement.

19.2.4 Other than as disclosed in the financial statements of Developer delivered to City prior to the date of this Agreement there is no pending or threatened litigation, tax claim, action, dispute or other proceeding of any nature whatsoever affecting Developer or any member or manager of Developer which could have a material adverse effect on the legal existence or powers of Developer or any manager or member thereof, or its financial conditions or operations or have a Material Adverse Effect on the ability of Developer or any manager or member of Developer to perform its obligations under this Agreement and neither Developer nor any manager or member of Developer is in default with respect to any Requirements of Law that might result in any such effect.

19.2.5 Developer represents and agrees that the Property will be used for the purpose of timely redevelopment as set forth in this Agreement and not held by Developer for speculation in landholding. For purposes of this Agreement, "Land Speculation" is defined as Developer acquiring a parcel of the Town Square Site and Developer not commencing construction in the time periods specified in the Project Schedule, which failure to commence construction or achieve Final Completion is not due to Unavoidable Delay. Developer understands and agrees that City would not have entered into this Agreement but for this representation and that the following factors and the qualification and expertise and experience of Developer and its members in the development of real property are of particular concern to the community and the City:

(a) The importance of the redevelopment of the Town Square Site to the general welfare of the community;

(b) The adoption by the City of Ordinance No. 405, 413 and subdivision of the Town Square Site into a number of different legal lots;

(c) The fact that the each parcel of the Town Square Site is not to be acquired or used for Land Speculation, but only for development *in* accordance with this Agreement;

(d) The reliance by the City upon the unique qualifications and ability of the Developer to serve as the catalyst for development for the Town Square Site; and

(e) The fact that there will be no change in ownership or control of the Developer or any member or any manager therein, nor any transfer of all or any portion of the Town Square Site by Developer except as provided in Section 25 of this Agreement, without the prior written consent of City, which consent may be withheld by City in its sole and absolute discretion.

6.2 City's Representations and Warranties. City hereby makes the following representations and warranties to Legacy, which shall be deemed also made as of the Closing, and the remedies for breach thereof shall survive Closing.

6.2.1 Subject to the City's disclaimer in Section 7 below, neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated by this Agreement will result (either immediately or after the passage of time and/or the giving of notice) in breach or default by the City under any agreement or understanding to which City is a party or by which City may be bound or which would have an effect upon City's ability to fully perform its obligations under this Agreement.

6.2.2 Subject to the City's disclaimer in Section 7 below, all requisite action has been taken by the City in connection with entering into this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby. The City has the right, power and authority to execute, deliver and perform this Agreement without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties. This Agreement, when executed and delivered by City and Legacy, and all documents executed by the City pursuant hereto, will constitute the valid and binding agreement of the City.

6.2.3 The persons executing this Agreement and the documents contemplated hereby on behalf of the City have the power and authority to bind the City.

7. City Disclaimer. City does not currently own the Property. City currently has only a Right to Repurchase under the DDA and the right to direct a sale to a third party under the Standstill Agreement. City promises herein only to direct Harbor Urban to convey the Property to Legacy or Legacy's Affiliate pursuant to the processes established in the DDA and the Standstill Agreement. City will use its reasonable efforts to encourage Harbor Urban to perform its obligation to sell the Property to a third party identified by the City. City cannot and does not promise Legacy that Harbor Urban will comply. The City will use its reasonable efforts to cooperate with Harbor Urban and Legacy and to encourage the successful completion of the repurchase transaction.

8. Closing. Under the DDA and the Standstill Agreement, Closing shall occur on the date (the "Closing Date") which is thirty days following the earlier of the date of the Standstill Termination Notice or March 1, 2013. Legacy's obligations to close shall be subject to the following: a) Legacy's receipt of an irrevocable commitment by Chicago Title Insurance Company to issue an Owner's Policy of Title Insurance subject only the Permitted Exceptions as defined in the DDA and any other non-financial encumbrances that have attached to the Property since Harbor Urban or its predecessor acquired it but were not added by Harbor Urban or its predecessor and do not materially and adversely affect Legacy's ability to develop as contemplated herein. Legacy recognizes that Closing may need to be delayed until Harbor Urban is reasonably able to close. In the event Closing does not occur on or before March 31, 2013, the City shall give not fewer than 10 business days' advance notice to Legacy of the Closing Date. Legacy agrees that its obligation to close as provided herein shall continue until June 1, 2013. If the Closing as contemplated herein has not occurred by June 1, 2013, through no fault of either party, including, without limitation, because Harbor Urban refuses or fails to convey the Property to Legacy, then either Legacy or the City may terminate this Agreement by sending written notice thereof to the other. Upon such termination, the Deposit shall be returned to Legacy and except for Legacy's indemnity obligation under Section 16 and Legacy's obligation to assign its purchase rights to the City under Section 14, the parties shall have no further obligations or liability hereunder.

9. Manner of Closing; Deliveries to Escrow. Section 23.2.3 of the DDA provides, with respect to a repurchase of the Property by the City: "... Developer will transfer title to the Repurchase Parcels to City by bargain and sale deed, free and clear of all liens and encumbrances except Permitted Exceptions. The Escrow Agent shall conduct the Closing and Closing costs and prorations shall be handled in the same manner as provided in Section 11 of this Agreement." Accordingly, for the sake of clarity, Legacy acknowledges and agrees that in the repurchase transaction, it will be responsible for delivering to escrow the items identified for "Developer" in Section 11.1.2 of the DDA, including, without limitation, the Purchase Price but expressly excluding the quitclaim deed set forth in 11.1.2(b). Legacy also agrees to pay all of the closing costs associated with the repurchase transaction. The City shall execute and deliver to escrow a termination of the Right of Reverter, which shall be recorded if and after Legacy closes the acquisition of the Property, accepts assignment of the DDA and executes the Eighth Amendment to the DDA all as provided herein and in the Eighth Amendment to the DDA.

10. "AS-IS" Sale. Legacy acknowledges that it has had an opportunity to and has conducted a thorough investigation of the Property and is in all respects knowledgeable and familiar with the present condition and state of repair of the Property. Legacy acknowledges that it is concluding the purchase of the Property based solely upon Legacy's inspection and investigation of the Property and that the Property is being sold to Legacy in an "AS-IS" condition and state of repair, and with all faults, of any kind or nature and without any representations or warranties, express, implied or statutory. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, CITY MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE PHYSICAL CONDITION OR VALUE OF THE PROPERTY, THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES ON THE PROPERTY, SOILS CONDITIONS, OR OTHER PHYSICAL CHARACTERISTIC OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR LEGACY'S INTENDED

DEVELOPMENT. CITY MAKES NO REPRESENTATION WHATSOEVER REGARDING THE FINANCIAL FEASIBILITY OF THE PROPOSED REDEVELOPMENT OF THE PROPERTY. Upon recording of the bargain and sale deed to the Property, Legacy or its Affiliate as applicable shall be deemed to have accepted the Property in its "AS-IS, WHERE-IS" condition and state of repair and does hereby waive and release City, its officials, officers, employees and agents from any and all damages, losses, liabilities, costs and expense whatsoever (including, without limitation, reasonable attorneys' fees and costs) and claims thereof, whether direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way arising out of or in connection with the physical or environmental condition of the Property or any Requirement of Law applicable thereto.

12. Post-Closing Processes Regarding Zoning Code Amendment and Affordable Housing Covenant. After Closing, the City Manager shall work with Legacy to review Legacy's request to modify the City Zoning Code regarding personal recreation space and balcony design requirements and shall recommend such modification, if any, he believes in the public interest to the City Council in a timely fashion. The City Manager also shall work with Legacy after Closing to review Legacy's request to modify the Affordable Housing Covenant (encumbering Parcels I, IV, V and VI of the Town Square Project and recorded on April 23, 2007 under King County No. 20070423001248) and/or to clarify, as appropriate, the allocation of performance requirements under the Affordable Housing Covenant among the owners of property encumbered by the Affordable Housing Covenant.

13. Approved Financing Plan. City and Legacy acknowledge that following conveyance of the Property to Legacy and assignment of the DDA to Legacy, Developer's then existing "Approved Financing Plan" will no longer be valid. Legacy shall provide the City for the City's review and approval under the DDA, a new Financing Plan covering its development of each the Parcel V Project, the Parcel IV Project and the Parcel VI Project no later than the date which is 60 days prior to the commencement of construction for each such Project.

14. Assignment of Legacy's Purchase Rights. In the event that the Closing as contemplated herein has not occurred by June 1, 2013 and either party elects to terminate this Agreement as provided in Section 8 above, then City may choose to direct Legacy to assign to the City Legacy's right to have Harbor Urban convey the Property to it under this Agreement. The City shall notify Legacy of the City's exercise of this right no later than thirty (30) days following the City's receipt of Legacy's notice of termination or following the date of the City's notice of termination as appropriate. The parties shall execute all documents necessary or convenient to effect this assignment.

15. Notices. All notices provided for or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; by delivering the same in person to such party; by prepaid telegram or telex; by overnight courier; or by facsimile copy thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to City, to:

City of Burien
400 SW 152nd St., Suite 300
Burien, Washington 98166
Attn: Mike Martin, City Manager
Telephone: (206) 248-5503
Facsimile: (206) 248-5539

With a copy to:

City of Burien
400 SW 152nd St., Suite 300
Burien, Washington 98166
Attn: City Attorney
Telephone: (206) 248-5535
Facsimile: (206) 248-5539

With a copy to:

Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, Washington 98101-3045
Attn: James A. Greenfield
Telephone: (206) 757-8055
Facsimile: (206) 757-7055

If to Legacy, to:

c/o Legacy Partners Residential, Inc.
7525 SE 24th Street, Suite 180
Mercer Island, WA 98040
Attn: Mr. Kerry Nicholson
Telephone: (206) 275-4060
Facsimile: (206) 275-4059

With a copy to:

Schultz & Wright, LLP
545 Middlefield Rd., Suite 160
Menlo Park, CA 94025
Attn: Anne Keeler Wright, Esq.
Telephone: (650) 462-0900
Facsimile: (650) 462-0998

16. Commissions. Legacy has agreed to pay a commission to Daniel A. Mathews of Kidder Mathews, conditioned upon, earned at, and payable only upon consummation of the Closing. City has not engaged any real estate agent or broker in connection with this Agreement. Legacy hereby agrees to defend, indemnify, and hold harmless the City, and City hereby agrees to defend, indemnify, and hold harmless Legacy, from and against any and all loss, damage, liability, cost or expense, including attorneys' fees, suffered or incurred by the indemnified party arising out of or relating to any claim for real estate commission made by any real estate agent or broker engaged by the indemnifying party in connection with the negotiations leading to this Agreement.

17. Assigns. Legacy may not assign its rights or delegate its duties hereunder (except to an Affiliate) without the consent of City, which may or may not be given in City's sole discretion. Any purported assignment to a non-Affiliate without City's prior written consent shall be ineffective. If City consents to an assignment, the assignment will not be effective against City until Legacy delivers to City a fully extended copy of the assignment instrument, which instrument must be satisfactory to City in both form and substance and pursuant to which the assignee assumes and agrees to perform for the benefit of City the obligations of Legacy under this Agreement, and pursuant to which the assignee makes the warranties and representations required of Legacy under this Agreement; provided, however, that no such assignment shall relieve the assignor from primary liability for its obligations under this Agreement. Subject to the preceding sentence, this Agreement shall inure to the benefit of and be binding on the parties hereto and their respective successors and assigns. This Agreement is for the sole benefit of City and Legacy, and no third party is intended to be a beneficiary hereof.

18. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Washington.

19. Entire Agreement. This Agreement is the entire agreement between City and Legacy concerning the sale of the Property and supersedes all prior and contemporaneous term sheets, letters of intent, agreements or understandings, written or oral, signed or unsigned concerning sale of the Property. No modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by Legacy and City.

20. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.

21. Costs and Expenses. Each party hereto will bear its own costs and expenses in connection with the negotiation, preparation and execution of this Agreement and other documentation related hereto and in the performance of its duties hereunder.

23. Further Documentation. Each of the parties agrees to execute, acknowledge, and deliver upon request by the other party any document which the requesting party reasonably deems necessary or desirable to evidence or effectuate the rights herein conferred or to implement or consummate the purposes and intents hereof, so long as such imposes no different or greater burden upon such party than is otherwise imposed hereunder.

24. Headings. The headings in this Agreement are for convenience only and do not in any way limit or affect the terms and provisions hereof.

25. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, "days" means calendar days, and the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5 p.m., Pacific Standard or Daylight time, as applicable. Time is of the essence.

26. Waiver. A party may, at any time or times, at its election, waive any of the conditions to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by such party. No waiver shall reduce the rights and remedies of such party by reason of any breach of any other party. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

27. Facsimile Signatures. Each party (i) has agreed 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 will rely on the telecopied signature, and (iv) acknowledges such reliance and waives any defenses to the enforcement of the documents effecting the transaction contemplated by this Agreement based on the fact that a signature was sent by telecopy.

28. Exhibits. Exhibits A through C, inclusive, attached hereto are incorporated herein by this reference for all purposes.

29. Counterparts. This Agreement may be executed in multiple counterparts, all of which together shall constitute one agreement.

30. Attorneys' Fees. In any suit, action, proceeding, or appeal therefrom, to enforce this Agreement or any term or provision hereof, or to interpret this Agreement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees.

[REMAINDER OF PAGE IS INTENTIONALLY BLANK]

EXECUTED in duplicate original as of the date and year first above written.

CITY:

THE CITY OF BURIEN, an optional municipal code city of the State of Washington

By _____

_____

Its _____

LEGACY:

LEGACY PARTNERS RESIDENTIAL LLC, a Delaware limited liability company

By _____

_____

Its _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

LOT E, CITY OF BURIEN LOT LINE ADJUSTMENT NO. PLA 05-1769, RECORDED DECEMBER 13, 2005 UNDER RECORDING NO. 20051213900014, IN KING COUNTY, WASHINGTON

LOT F, CITY OF BURIEN LOT LINE ADJUSTMENT NO. PLA 07-0895, RECORDED JUNE 26, 2007 UNDER RECORDING NO. 20070626900005, IN KING COUNTY, WASHINGTON.

LOT G, CITY OF BURIEN LOT LINE ADJUSTMENT NO. PLA 07-0895, RECORDED JUNE 26, 2007 UNDER RECORDING NO. 20070626900005, IN KING COUNTY, WASHINGTON.

EXHIBIT B
FORM OF ASSIGNMENT OF THE DDA

ASSIGNMENT AND ASSUMPTION OF DISPOSITION AND DEVELOPMENT AGREEMENT

This Assignment and Assumption of Disposition and Development Agreement (this "**Agreement**") is made as of _____ __, 2013 (the "**Effective Date**") by and between RECP/UP Burien II, LP, a Washington limited liability company ("**Assignor**"), and _____, a _____ ("**Assignee**") and consented to by the City of Burien, a Washington municipal corporation ("**City**").

W I T N E S S E T H:

WHEREAS, Assignor and City are parties to that certain Disposition and Development Agreement dated June 29, 2005 and subsequently amended seven times (the "**DDA**") which agreement relates to the development of certain real property in the City of Burien's Town Square (the "**Property**"); and

WHEREAS, Assignor and City are also parties to that certain Standstill Agreement, dated August 15, 2012, as amended, (the "**Standstill Agreement**") which relates to Assignor's performance of the DDA and provides City with the right in certain circumstances to direct Assignor to convey property, to assign its interest in the DDA and to assign its interest in certain "Work Product" all to a third party selected by the City. The Standstill Agreement defined that Work Product as "all of Developer's [Assignor's] rights to all licenses, permits, consents, governmental approvals, plans, drawings, specifications, surveys, engineering, soils and environmental reports, and other technical descriptions or other rights or privileges relating to the Project, including, without limitation, all 'instruments of service' and other plans, specifications, designs or similar documents (in printed and electronic forms) created through architectural, engineering, survey or other development services for the Alternate Project, for which City or the City-selected third party or its assigns would need a license or ownership to use (the '**Work Product**'). A schedule of all of the items comprising the Work Product is set forth on Exhibit A hereto; and

WHEREAS, the circumstances giving rise to the City being able to direct Assignor to sell the Property and assign Assignor's interest in the DDA and the Work Product to a third party selected by the City have occurred; and

WHEREAS, by Resolution 341, adopted on February 25, 2013, the City Council selected Assignee as the third party to whom the City would direct Assignor to sell the Property and assign Assignor's interest in the DDA and the Work Product; and

WHEREAS, the City has directed Assignor to sell the Property and assign Assignor's interest in the DDA and the Work Product to Assignee. Assignor's interest in the DDA and the Work Product shall be collectively referenced herein as the "**Assigned Assets**"; and

WHEREAS, all capitalized terms used herein but not defined herein shall have the meanings given them in the DDA and the Standstill Agreement;

NOW THEREFORE, for Ten Dollars ($10.00) and other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment to Assignee. Effective as of the date hereof (the "**Effective Date**"), Assignor does hereby sell, assign, transfer, grant, convey and set over unto Assignee all of its right, title, and interest in, to and under the Assigned Assets (other than those real property interests otherwise conveyed by Assignor to Assignee by deed) to have and to hold the same unto Assignee, its legal representatives, successors and assigns, forever.

2. Assumption by Assignee. Assignee does hereby accept the sale, assignment, transfer, grant and conveyance of the Assigned Assets and hereby assumes and agrees to observe and perform all of the obligations, terms, covenants and conditions of the Assigned Assets accruing after the date hereof.

3. Indemnification. Assignor shall release, indemnify, protect, defend and hold Assignee harmless from and against any and all claims, damages, losses, suits, proceedings, costs and expenses (including, but not limited to, reasonable attorney's fees) arising in connection with the Assigned Asset and accruing prior to the Effective Date of this Assignment Agreement. Assignee shall release, indemnify, protect, defend and hold Assignor harmless from and against any and all claims, damages, losses, suits, proceedings, costs and expenses (including, but not limited to, reasonable attorney's fees) arising in connection with the Assigned Assets and accruing after the Effective Date of this Assignment.

3. Disclaimer. Assignee acknowledges that Assignor has not made and does not make any representations or warranties of any kind whatsoever, oral or written, express or implied, with respect to any of the Assigned Assets, except as expressly set forth in the DDA for a "repurchase" transaction, including without limitation, those warranties contained in the bargain and sale deed. Assignee further acknowledges that the City has not made and does not make any representations or warranties of any kind whatsoever, oral or written, express or implied, with respect to any of the Assigned Assets. In addition, and notwithstanding anything contained in this Assignment to the contrary, this Assignment is subject to all disclaimers and qualifications by the City and all encumbrances set forth in the DDA with respect to the Assigned Assets and all such disclaimers, qualifications, and encumbrances are hereby incorporated into this Agreement by reference and made a part of this Assignment.

4. Miscellaneous. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, Assignor and Assignee and their respective successors and assigns. This Agreement shall be governed by, construed under, and interpreted and enforced in accordance with, the laws of the State of Washington. This Agreement may be executed in several counterparts, each of which will be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, as a sealed instrument, as of the date first above written.

ASSIGNOR:

RECP/UP BURIEN II, LP, a Washington limited liability company

By: _____
Its: _____

ASSIGNEE:

LEGACY PARTNERS RESIDENTIAL LLC, a Delaware limited liability company

By _____
_____
Its _____

Consented to:

CITY:

CITY OF BURIEN, a Washington municipal corporation

By_____
Mike Martin, City Manager

State of Washington)
) §
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 Manager of RECP/UP BURIEN II, LP to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

_____
Print name: _____
Notary Public in and for the state of Washington.
My appointment expires: ____/____/____

State of _____)
) §
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 Manager of LEGACY PARTNERS RESIDENTIAL LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

_____
Print name: _____
Notary Public in and for the state of
_____.
My appointment expires: ____/____/____

EXHIBIT A

SCHEDULE OF WORK PRODUCT ITEMS

PRINCESS ROSE ONLY

EXHIBIT C
FORM OF EIGHTH AMENDMENT TO DDA

AMENDMENT NO. 8 TO DISPOSITION AND DEVELOPMENT AGREEMENT (PARCELS I, IV, V AND VI)

This Amendment No. 8 to Disposition and Development Agreement (Parcels I, IV, V AND VI) (the "**Amendment**") is entered into as of _____, 2013 by and between the CITY OF BURIEN, a Washington municipal corporation (the "**City**") and _____ a _____ ("**Developer**"), successor-in-interest to URBAN VENTURES BURIEN, LLC, a Washington limited liability company.

RECITALS

A. City and Developer's predecessor-in-interest entered into that certain Disposition and Development Agreement (Parcels I, IV, V and VI) dated June 29, 2005, as amended (the "**DDA**") providing for the sale and phased development of the Property as defined in the DDA, subject to satisfaction of certain conditions precedent.

B. The DDA allows Developer to choose to develop the Property in phases. Developer's predecessor, BURIEN TOWN SQUARE, L.L.C., a Delaware limited liability company, ("**Harbor Urban**") chose to do so and substantially completed Phase I of the Project in July 2009. Harbor Urban did not commence construction of any subsequent phase of the Town Square Project.

C. On May 8, 2012, the City notified Harbor Urban of the City's intent to exercise its right to repurchase the Property under Section 23.2.3 of the DDA. Harbor Urban requested that the City suspend its exercise of its repurchase right to allow Harbor Urban time to propose an alternate project through a modification of the Development Parameters and a new Project Schedule.

D. The City and Harbor Urban entered into a Standstill Agreement on August 15, 2012 to allow the Harbor Urban the chance to propose and the City the chance to consider an alternative project to be developed on the Property. The Standstill Agreement provided that if the City chose not to accept Harbor Urban's Alternate Project, the City could, among other options, direct Harbor Urban to sell the Property to a third party selected by the City.

E. On February 25, 2013, the City Council rejected the Alternate Project proposed by Harbor Urban; authorized the City Manager to direct Harbor Urban to sell the Property and assign its interest in the DDA to Developer; and authorized the City Manager to execute this Eighth Amendment to the DDA.

F. On February __, 2013, the City Council sent Harbor Urban a Standstill Termination Notice under the Standstill Agreement and directed Harbor Urban to sell the Property and assign its interest in the DDA to Developer.

G. On the date of this Amendment, Developer acquired the Property and accepted assignment of the DDA.

E. The City and Developer now desire to amend the DDA to in the manner described below.

AGREEMENT

For good and valuable consideration, the City and Developer agree as follows:

1. **Incorporation of Recitals; Definitions.** Each of the recitals set forth above is incorporated into this Amendment as though fully set forth in it. Capitalized terms not otherwise defined in this Amendment will have the same meaning as given those terms in the DDA.

2. **Amendments to the DDA.** The following Sections of the DDA are amended, as shown in the attached Exhibit A – Schedule of Amended Sections:

Section 2.2 – Description of Town Square Project by Parcels; Phasing of Development (introductory paragraph)
Section 2.2.4 – Parcels IV and V
Section 2.2.5 – Parcel VI
Section 2.2.8 – Phased Development
Section 4.4 – Approved Conceptual Design Documents
Section 13.1 – Development in Phases; Outside Commencement and Completion of Construction
Section 13.5 – Project Manager
Section 14.1 – Approval Procedure
Section 16.1 -- Construction Loan Restriction; Notice to Construction Lender
Section 16.3 – Construction Lender Right to Cure Defaults.
Section 18.1.1 – Substantial Completion
Section 18.1.2 – Notice of Substantial Completion
Section 18.3 – Certificate of Completion
Section 19.2 – Developer Representations
Section 19.2.5 – No Land Speculation
Section 23.1.2 – Developer Default
Section 23.1.6 – Developer Default
Section 23.1.7 – Developer Default
Section 23.2 – City Remedies upon Developer Event of Default
Section 23.2.2 – Between Closing and Certificate of Completion
Section 23.2.3 – City Right of Repurchase
Section 25.1 – Personal Services Contract
Section 25.2 – Restrictions on Transfer of Interests in Developer
Section 25.4 – No Assignment of Agreement
Section 27.11.1 – Representatives of Developer

Section 27.12 – Notices
Exhibit L

3. **Exhibits.** Except with respect to the project developed on Parcel I, which has been substantially completed, the following Exhibits and Schedule to the DDA are deleted and replaced with the following Exhibits attached to this Amendment:

Exhibits C, D and **K-1** are replaced with Exhibit B
Exhibit J and **Schedule 4** are replaced with Exhibit C

4. **Counterparts.** This Amendment may be executed in counterparts, each of which will constitute an original and all of which will constitute but one original.

5. **Validity.** Except as amended by this Amendment, the DDA remains in full force and effect. To the extent any term of or exhibit attached to this Amendment conflicts with or is inconsistent with the DDA, the terms of or exhibits attached to this Amendment will control.

6. **Governing Law.** This Amendment will be governed by and construed and enforced in accordance with the laws of the State of Washington.

DEVELOPER:

LEGACY PARTNERS RESIDENTIAL, LLC, a Delaware limited liability company

By _____
Name _____
Title _____

CITY:

CITY OF BURIEN, a Washington municipal corporation

By _____
Name _____
Title _____

EXHIBIT A

Schedule of Amended DDA Sections

Section 2.2 – Description of Town Square Project by Parcels; Phasing of Development

2.2 Description of Town Square Project by Parcels; Phasing of Development. The Town Square Project is intended to consist of a series of well coordinated public and private developments to be built on each of the separate parcels constituting the Town Square Project (including a public park, public parking, streets and sidewalk improvements on real property to be retained by City). The Town Square Site consists of Parcels I through VIII. Phase ~~One~~I of the Town Square Project was substantially completed in July 2009 and Developer has no further obligation or responsibility in connection therewith pursuant to the terms of this Agreement. Phase ~~2~~II is intended to be constructed on ~~Parcels I through VI as hereinafter described~~ Parcel V. Phase III is intended to be constructed on Parcel IV. Phase IV is intended to be constructed on Parcel VI. Developer does not intend to purchase or develop Parcel VII or Parcel VIII. Developer may develop one Phase at a time or more than one Phase simultaneously.

Section 2.2.4 – Parcels IV and V

2.2.4 Parcels IV and V~~Parcel IV is intended to consist of approximately 52,396 square feet of development area and Parcel V is intended to consist of approximately 75,525 square feet of development area. Proposed improvements will consist of a mixed-use development on the two parcels, consisting of a minimum of 22,100 square feet of ground floor retail space which will be located at the corners of Southwest 150th Street and 4th Avenue Southwest and Southwest 151st Street and 4th Avenue Southwest and generally along the proposed extensions of Southwest 151st Street and 5th Avenue Southwest and face the town square to be constructed on Parcel II, and residential use in accordance with the Development Parameters. 12,300 square feet of space located along Southwest 150th Street and 5th Avenue Southwest (other than the corner of Southwest 150th Street and 4th Avenue Southwest) may be designed as live/work units with the consent of the City if not initially developed as ground floor retail space. The development will also contain approximately 400 parking spaces. Parcels IV and V are currently owned by the City with the exception of the Strobel Property (as hereinafter defined). The City will acquire the Strobel Property for public purposes for use as a municipal park, municipal parking, open space and construction of certain public street and sidewalk improvements. The remainder of Parcel IV and Parcels I, V and VI are being sold by City to Developer for redevelopment in accordance with the terms and conditions set forth~~ The Parcel V Project is intended to consist of a mixed use building containing approximately 140 to 180 residential units and ancillary retail space. The conceptual plan for the development of the Parcel V Project is attached as Exhibit B to Amendment No. 8 to this Agreement ("Amendment 8"). The Parcel IV Project is intended to consist of a project containing apartments, condominiums, office space, retail space, a hotel or a combination of any of those uses. The conceptual design for the development of the Parcel IV Project will be agreed between the City and Developer in accordance with Section 4.4 of this Agreement.

Section 2.2.5 – Parcel VI

2.2.5 Parcel VI. The Parcel VI Project is intended to be a "to be determined" project. ~~The Parcel VI Project is intended to consist of approximately 14,412 square feet of development area. Proposed improvements will consist of at least 11 residential units with at least 22 parking spaces on-site, for sale or lease. Parcel VI is currently owned by the City and together with Parcels I, IV and V, is being sold by City to Developer for redevelopment in accordance with the terms and conditions set forth in this Agreement.~~ If Developer acquires additional property adjacent to Parcel VI, then Developer may develop apartments, condominiums, office space, retail space, a hotel or a combination of any of those uses on the combined properties on Parcel VI. Prior to the development of the Parcel VI Project, Developer may use Parcel VI for parking, construction staging or open space purposes or other use as may be approved by the City. If, after 2 years following the substantial completion of both Phase II (Parcel V) and Phase III (Parcel IV), Developer has not acquired additional property or the property has not been combined with an adjacent parcel, the Developer will submit to the City, and the City will duly consider, an Alternate Permanent Development Plan and Project Description for Phase IV (Parcel VI) that is consistent with the range of uses available in the Downtown Commercial Zone at that time.

The redevelopment of Parcels IV, V and VI as described above is hereinafter referred to as the "Retail Housing Project". The Parcel I Project and the Retail/Housing Project are hereinafter referred to collectively as the "Private Development Projects."

Section 2.2.8 – Phased Development

2.2.8 Phased Development. The parties hereto understand and agree that the description of the improvements to be built on the various parcels and the timing of development on the various parcels ~~including the City Street Improvements~~ is subject to change based upon a variety of factors, including, but not limited to, ~~the availability and timing of federal and state grants to pay for a portion of streets and other infrastructure improvements, the decision by Bartell Drugs to relocate its existing drug store to a different location within the City, which may include one of the parcels in the Town Square Site and~~ tenant interest in the proposed residential, retail, office and commercial space to be developed as part of the Town Square Site, and that redevelopment of various parcels may be combined in one development agreement or developed in a different order. The proposed development schedule for the ~~entire~~ remainder of the Town Square Site (including phasing of development on individual parcels) is set forth on ~~Schedule 4~~ Exhibit C to Amendment 8. Developer's right to develop the remainder of Town Square in phases as described in this Section 2.2.8 does not relieve Developer of its obligation to achieve the development milestones set forth on Exhibit C to Amendment 8 *not later than* the dates set forth in Exhibit C to Amendment 8.

Section 4.4 – Approved Conceptual Design Documents

4.4 Approved Conceptual Design Documents. ~~Attached hereto as Exhibit K-1 and by this reference incorporated herein are the Approved Conceptual Design Documents for the Retail/Housing Project which have been approved by Developer and City and which are the initial Drawings and other documents illustrating the scale and relationship of the Project components for Parcels IV, V and VI including the configuration of townhouses to be constructed on Parcel VI, configuration of mixed use buildings to be constructed on Parcels IV and V, including number, configuration and square footage of multifamily, residential condominium and other housing, ground floor retail space, location of any live/work space, including pedestrian and vehicular access to the underground parking garages, onsite parking, landscaping and other ancillary improvements.~~

4.4.1. Parcel V. The "Approved Conceptual Design Documents" for the Parcel V Project are attached as Exhibit B to Amendment 8.

4.4.2 Parcel IV. Within the timeframe set forth in the Project Schedule attached as Exhibit C to Amendment 8, Developer will deliver to the City Developer's proposed Conceptual Design Documents (other than Design Guidelines) for the Parcel IV Project. The City and Developer will work together and cooperate in good faith to agree upon Conceptual Design Documents (other than Design Guidelines) for the Parcel IV Project for the uses described in Section 2.2.4 of this Agreement. The City will not withhold its approval of such Conceptual Design Documents for the Parcel IV Project so long as the concept proposed includes any of the uses described in Section 2.2.4 and meets the Design Guidelines, with any reasonable modifications proposed by Developer for the specific project and approved by the City in the course of the regular exercise of its regulatory land use authority. When approved by the City, such Conceptual Design Documents shall become the Approved Conceptual Design Documents for the Parcel IV Project.

4.4.3 Parcel VI. Within the timeframe set forth in the Project Schedule attached as Exhibit C to Amendment 8, Developer will deliver to the City Developer's proposed Conceptual Design Documents (other than Design Guidelines) for the Parcel VI Project. The City and Developer will work together and cooperate in good faith to agree upon Conceptual Design Documents (other than Design Guidelines) for the Parcel VI Project for the uses described in Section 2.2.4 of this Agreement. The City will not withhold its approval for Conceptual Design Documents (other than Design Guidelines) for Parcel VI so long as the concept proposed includes any of the uses described in Section 2.2.5 and meets the Design Guidelines, with any reasonable modifications required for the specific project proposed approved by the City in the course of the regular exercise of its regulatory land use authority. When approved by the City, such Conceptual Design Documents shall become the Approved Conceptual Design Documents for the Parcel VI Project.

Section 13.1 – Development in Phases; Outside Commencement and Completion of Construction

13.1 Development in Phases; Outside Commencement and Completion of Construction. Developer has provided the City the Project Schedule attached ~~to this agreement~~ as Exhibit C~~J~~ to Amendment 8 (the "Project Schedule"), which represents Developer's current anticipated schedule for development of the ~~Private Development Projects~~ Retail/Housing Project. Developer reserves the right to develop the Property in up to three additional phases ~~Phase A shall consist of the construction of the mixed-use development on Parcel IV. Phase B shall consist of the construction of the mixed-use development on Parcel V and the 11 townhomes and associated parking on Parcel VI and Phase C shall consist of the construction of the mixed-use development approved by the City for Parcel I (~~, as described in Section 2.2 (each individually a "Phase" and collectively, "Phases"~~)~~. Developer may construct ~~all three~~ one Phase at a time or one or more Phases ~~simultaneously~~. In the event Developer develops the Property in phases, Developer shall submit a substantially complete building application for each such Phase; and must commence construction of each such Phase no later than the date set forth for such milestones on the Project Schedule. ~~initial Phase to be developed within three hundred sixty (360) days following Closing and must commence construction within thirty (30) days following issuance of all building permits necessary for such Phase, and must commence construction of each subsequent Phase within two (2) years following Substantial Completion of the previous Phasesimultaneously.~~ Once construction on 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 the commencement of construction~~ in the time period required under the Project Schedule in a good and workmanlike manner, free from defects in work or materials and in substantial accordance with the Approved Building Permit Documents for the applicable Phase ~~of the Private Development Projects,~~ free and clear of all construction liens arising under RCW 60.04.021. The ~~Private Development Projects~~ Retail/Housing Project shall be constructed in accordance with all Requirements of Law applicable to the Property.

Section 13.5 – Project Manager

13.5 Project Manager. The project manager for development of the Private Development Projects shall be ~~John Schwartz~~ Kathryn Armstrong. If ~~John Schwartz~~ Kathryn Armstrong is no longer affiliated with Developer, Developer shall designate a new experienced project manager with similar experience to Kathryn Armstrong. There shall be no change in the project manager assigned to the Private Development Projects without prior written notice to City. Developer may assign other qualified construction personnel to the Private Development Projects as needed to construct the Private Development Projects in accordance with the requirements of this Agreement so as to achieve Substantial Completion of the Private Development Projects on or before the Substantial Completion Date.

Section 14.1 – Approval Procedure

14.1 Approval Procedure. For each Phase, Developer shall cause its consultants to prepare schematic design drawings and detailed specifications for the ~~Private Development Projects~~ ~~P~~project to be built on the applicable Parcel (the "Schematic Design

Documents") (which may be prepared and submitted in phases) ~~which~~). The Schematic Design Documents will be consistent with the Approved Conceptual Design Documents for the applicable Phase in all material respects. Developer shall submit the Schematic Design Documents to the City for the City's review for consistency with the Approved Conceptual Design Documents and Design Guidelines. City shall promptly review the Schematic Design Documents submitted in accordance with this Agreement and shall give Developer written notice within fifteen (15) business days following its receipt of such Schematic Design Documents of its approval or disapproval thereof, specifying in the case of its disapproval, the reasons therefore. The City shall have the right to disapprove Schematic Design Documents which (a) ~~do not meet the Project Requirements~~ do not comply with all applicable building and land use laws, rules and regulations (as may be amended by the City in the regular exercise of its regulatory land use authority in response to a request by Developer), or ~~(c) do not comply withunless the Development Parameters, (dDeveloper has proposed changes to those laws, rules and regulations which are acceptable to the City,~~ (b) do not comply with the Design Guidelines (as may be amended by the City in the regular exercise of its regulatory land use authority in response to a request by Developer) ~~as such Design Guidelines may be modified by the agreement of the City and Developer)~~ or the Approved Conceptual Design Documents ~~and Design Guidelines for the in all material respects, or (e) propose changes in work or materials which do not conform with the Design Guidelines~~. If City has not responded to the Schematic Design Documents within fifteen (15) business days after City's receipt thereof, or of any resubmittals thereof, the Schematic Design Documents shall be deemed approved. If the City has not approved the Schematic Design Documents pursuant to the process set forth in this Section 14.1 and Section 14.2 below within sixty (60) days of Developer's submittal thereof, Developer will have the right to extend all subsequent dates by which Developer obligations are due under this Agreement by one day for each day after the expiration of the 60 day period that the City approves the Schematic Design Documents.

16.1 – Construction Loan Restriction; Notice to Construction Lender

16.1 Construction Loan Restriction; Notice to Construction Lender. Until Developer is entitled to a Certificate of Completion with respect to the Private Development Projects, Developer shall not encumber any of Parcels ~~within the Private Development Projects~~ V, IV or VI as security for a loan in which such Parcel is jointly secured with or cross-defaulted with any property which is not ~~the Town Square Site~~ Parcel V, IV or VI. As used in the Agreement, the term "Construction Loan" shall mean any loan made to Developer the performance of which is secured by a real estate mortgage or deed of trust encumbering Parcel V, IV and/or VI (and perhaps other collateral), the proceeds of which are disbursed periodically to pay for the Property and/or for the hard and soft costs of development and/or construction of the Parcel V, IV and/or VI Project and financing costs. The term "Construction Lender" shall mean a person or entity making a Construction Loan and about which Developer has notified the City and provided the City the name and address of such person or entity. The City, upon serving Developer any notice or demand to Developer with respect to breach or default by Developer of its obligations or covenants under this Agreement shall, at the same time, forward a copy of such notice or demand to Developer's Construction Lender at the last address of Construction Lender ~~shown on the records of the City~~ provided to the City by Developer.

Section 16.3 – Construction Lender Right to Cure Defaults

16.3 Construction Lender Right to Cure Defaults. Construction Lender shall have the right, but not the obligation, to remedy such default or cause the same to be remedied for a period of thirty (30) days after the expiration of the cure period, if any, provided for under this Agreement (or, if such default requires more than thirty (30) days to cure, such longer period as is necessary (including any period necessary to foreclose the Construction Loan and take possession of the Parcel ~~I Project~~ or ~~Retail/Housing Project, as applicable~~ Parcels securing the Construction Loan (the "Applicable Parcel")) so long as Construction Lender commences to cure the default within the thirty (30) day period and diligently prosecutes the cure to completion; and City shall accept such performance by or at the instance of Construction Lender as if the same had been made by Developer. The Construction Lender may commence to cure the default by giving Developer a notice of default in accordance with the process described in the loan documents, so long as Construction Lender diligently and timely follows up the notice of default with the actions necessary to foreclose the Construction Loan and/or otherwise diligently prosecutes the cure to completion.

If the Event of Default relates to construction of one or more of the Private Development Projects, the Construction Lender shall have the right, but not the obligation, to assume the rights, duties and obligations of Developer under this Agreement and shall thereafter construct or complete the construction of the applicable Private Development Projects in accordance with the terms, covenants, conditions and provisions of this Agreement. City shall not exercise its right to repurchase the ~~Right of Reverter~~ Property under this Agreement so long as Construction Lender is not in default under this Agreement. However, nothing in this Agreement shall be deemed to permit or authorize Construction Lender to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized under this Agreement. Nothing contained in this Agreement shall be deemed to permit or authorize Construction Lender to undertake or continue the construction or completion of the applicable Private Development Projects (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations under this Agreement with respect to the Applicable Parcel. If Construction Lender, determines to proceed with the construction of ~~either~~ the Project on the Applicable Parcel ~~I Project or the Retail/Housing Project~~, Construction Lender shall notify City in writing of its election to assume the rights, duties and obligations of Developer under this Agreement within ninety (90) days following the Developer's Event of Default and shall enter into an assumption agreement in form and substance satisfactory to City with respect to the ~~applicable Private Development Projects and~~ Applicable Parcel. Construction Lender shall thereafter have all the rights, duties and obligations of Developer with respect to ~~such Project~~ the Applicable Parcel. Upon Construction Lender's Final Completion of the Project on the ~~Parcel I Project or Retail/Housing Project, as applicable, as hereinafter defined~~ Applicable Parcel, City shall deliver a Certificate of Completion to Construction Lender upon satisfaction of the conditions set forth in Section 18 of this Agreement.

Construction Lender will have the right to transfer title to an Applicable Parcel acquired as a result of a foreclosure sale or acceptance of a deed in lieu of foreclosure to a third party with the prior written consent of the City. The City will not unreasonably withhold, condition or delay its

consent; provided however that the City may withhold its consent if it determines in its sole discretion, which discretion shall not be arbitrary or capricious, that the third party does not have sufficient real estate development experience or the financial means to satisfactorily perform the obligations of Developer hereunder. The City may condition its consent on the transferee assuming the obligations of Developer under this Agreement with respect to the Applicable Parcel.

Section 18.1.1 – Substantial Completion

18.1.1 Substantial Completion. "Substantial Completion" means that the City has issued a letter or certificate of occupancy or similar approval to allow physical occupancy of ~~such that the tenants are permitted to physically occupy all of~~ the applicable phase of the Private Development Projects for ~~residential housing, retail, and parking~~ the purposes, as expressly permitted for such Phase hereunder and subject to satisfaction of certain conditions noted therein.

Section 18.1.2 – Notice of Substantial Completion

18.1.2 Notice of Substantial Completion. Developer shall give notice in writing to City at least thirty (30) days prior to the date upon which Developer anticipates the applicable phase of the Private Development Projects shall be Substantially Complete. During the fifteen (15) business day period after the delivery of the estimated completion notice, City will inspect and review the applicable Phase of the Private Development Projects to determine whether such applicable Phase of the Private Development Projects has achieved Substantial Completion, and shall advise Developer of work which must be completed before the City could issue a final certificate of occupancy for the ~~Retail Housing Project~~ applicable Phase.

Section 18.3 – Certificate of Completion

18.3 Certificate of Completion. Once Final Completion of the applicable phase of the Private Development Projects has occurred, Developer shall file a Notice of Completion with City. Once the City confirms that all improvements intended to be constructed as part of the applicable phase of the Private Development Projects are complete and Developer has performed all of its other obligations under the Agreement with respect to the applicable phase of the Private Development Projects, City shall furnish the Developer with a Certificate of Completion in the form attached hereto as Exhibit L. The Certificate of Completion shall be a conclusive determination that the agreements with respect to the Developer's construction obligations for the applicable phase of the Private Development Projects have been met ~~and the City's Right of Reverter with respect to the applicable phase of the Private Development Projects shall automatically terminate and be of no further force and effect following issuance of the Certificate of Completion.~~. The Certificate shall be in a form that enables it to be recorded in the official records of King County, Washington. If the Private Development Projects is developed in phases, Developer shall be entitled to a Certificate of Completion once Final Completion of

that portion of the Private Development Projects has been achieved ~~and City's Right of Reverter shall terminate as to the completed portion only~~.

Section 19.2 Developer Representations.

19.2.1 Developer is a ~~limited liability company~~ legal entity duly organized and validly existing under the laws of the state of its formation, duly authorized to conduct business in the State of Washington and has the power to own its property and carry on its business as now being conducted. All ~~limited liability company~~ requisite action on the part of Developer and all corporate or other action on the part of its managers and members necessary for the authorization, execution, delivery and performance of this Agreement have been duly taken. Developer has full power and authority to enter into, execute and deliver this Agreement and to perform its obligations under this Agreement.

19.2.2 This Agreement when executed and delivered by Developer, and assuming it has been duly authorized, executed and delivered by City, will, as of the date of Amendment No. 8 to this Agreement, be the legal, valid and binding agreement of Developer, enforceable in accordance with its terms, except to the extent that the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws, affecting the rights of creditors generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

19.2.3 No consent, approval, permission, authorization, order or license of any person or of any Governmental Body (except for City approval of Schematic Design Documents and Building Permit Documents for the Private Development Projects and issuance of building permits necessary for construction) is necessary in connection with the execution, delivery and performance of this Agreement by Developer or any transaction contemplated hereby, except as may have already been obtained by Developer prior to the date of this Agreement. There is no provision in Developer's certificate of formation or ~~limited liability company agreement~~ organizational documents nor any provision in the organizational documents of any member or manager of Developer which would be contravened by the execution and delivery of this Agreement or by the performance of any provision, condition, covenant or other term required to be performed by Developer under this Agreement.

Section 19.2.5 – No Land Speculation

19.2.5 Developer represents and agrees that the Property will be used for the purpose of timely redevelopment as set forth in this Agreement and not held by Developer for speculation in landholding. For purposes of this Agreement, "Land Speculation" is defined as Developer acquiring a parcel of the Town Square Site and Developer not commencing construction within thirty (30) days after receipt of all building permits or not using diligent continuous efforts to achieve ~~achieving~~ Substantial Completion of each Phase of ~~the Parcel I Project or~~ the Retail/Housing Project, as applicable~~, within three (3) years following the construction commencement date for the Parcel I Project or the Retail Housing Project, as applicable , which~~

~~failure to commence construction or achieve Final Completion is not due to Unavoidable Delay~~. Developer understands and agrees that City would not have entered into this Agreement but for this representation and that the following factors and the qualification and expertise and experience of Developer and its members in the development of real property are of particular concern to the community and the City:

(a) The importance of the redevelopment of the Town Square Site to the general welfare of the community;

(b) The adoption by the City of Ordinance No. 405, 413 and subdivision of the Town Square Site into a number of different legal lots;

(c) The fact that the each parcel of the Town Square Site is not to be acquired or used for Land Speculation, but only for development in accordance with this Agreement;

(d) The reliance by the City upon the unique qualifications and ability of the Developer to serve as the catalyst for development for the Town Square Site; and

(e) The fact that there will be no change in ownership or control of the Developer or any member or any manager therein, nor any transfer of all or any portion of the Town Square Site by Developer except as provided in Section 25 of this Agreement, without the prior written consent of City, which consent may be withheld by City in its sole and absolute discretion.

Section 23.1.2 – Developer Default

23.1.2 If following the commencement of construction Developer has abandoned a Phase of the Private Development Projects by ceasing work on the ~~any~~ Phase of the Private Development Projects for a period of sixty (60) consecutive days (except for Unavoidable Delay); or

Section 23.1.6 – Developer Default

23.1.6 If Developer has not commenced construction of the initial Phase of the Private Development Projects within thirty (30) days following issuance of all necessary building permits, or has not commenced construction of any subsequent Phase ~~within two (2) years following Substantial Completion of the previous Phase~~ on or before the milestone date for commencing construction of such Phase set forth in the Project Schedule; or

Section 23.1.7 – Developer Default

23.1.7 If Substantial Completion of any Phase of the ~~Private Development Projects~~ Retail/Housing Project has not occurred ~~for any reason whatsoever, except for Unavoidable Delay, on or before~~ on or before the ~~third (3rd) anniversary of the Construction Commencement Date for such~~ milestone date for completing construction of such Phase set forth in the Project Schedule and Developer is not using diligent continuous efforts to achieve Substantial Completion thereafter as quickly as commercially and reasonably possible (and as used herein "diligent continuous effort" shall mean assiduous and expeditious execution of the

work recognizing that Developer has assumed the economic and business risks associated with achieving Substantial Completion for each Phase by the milestone dates set forth in the Project Schedule); or

Section 23.2 – City Remedies upon Developer Event of Default

23.2 City Remedies upon Developer Event of Default. Upon any Event of Default by Developer, City shall give Developer written notice of the same, whereupon following receipt of such written notice Developer shall have thirty (30) days within which to commence all necessary action to cure any such Event of Default, (and if such cure is commenced, proceed to diligently complete such cure within a reasonable period of time), except with respect to Events of Default set forth in Section 23.1.4, 23.1.6, 23.1.7 or 23.1.8 for which no cure period exists beyond the time period stated therein, or elsewhere in this Agreement expressly with respect to such Events of Default. In the event Developer fails to cure such Event of Default within the time period set forth above, City shall be entitled to exercise one or more of the following remedies:

Section 23.2.2 – Between Closing and Certificate of Completion

23.2.2 Between Closing and Certificate of Completion. With respect to a Developer Event of Default occurring after Closing of the sale of the Property or portion thereof, but prior to the date the Developer is entitled to issuance of a Certificate of Completion, and provided City is not in default hereunder, City may: (a) terminate this Agreement upon ten (10) days prior written notice to Developer; (~~B~~b) bring an action for damages; or (c) ~~seek specific performance of this Agreement; or (D) if d)~~ in the case of an Event of Default under Section ~~23.1.7 has occurred and Construction Lender has not cured such default in accordance with the provisions of~~ 23.1.6 or Section ~~16 above~~ 23.1.7, exercise its right to ~~obtain and record the quit claim deed described in~~ repurchase a Parcel or Parcels under Section ~~11.1~~ 23.2~~(b) (.3~~.3 below, if the conditions allowing the right to repurchase are satisfied. The Right of Reverter ~~with respect to all Phases~~ contained in the Agreement is terminated and is of ~~the Property which are~~ no further force or effect. Upon Developer's request, the ~~subject of such default, whereupon~~ City ~~shall be entitled to~~ will record a notice of the ~~Property free and clear of all liens and encumbrances except the Permitted Exceptions~~ the termination of the Right of Reverter.

~~; provided, however, that if an event of default has occurred under the Construction Loan Documents for a Phase of the Private Development Projects at any time prior to the third (3rd) anniversary of the Construction Commencement Date for such Phase, City agrees for the benefit of Construction Lender only, that it shall not exercise its Right of Reverter, or seek to record the quit claim deed with respect to the applicable Phase of the Private Development Projects encumbered by such Construction Lender's Construction Loan Documents so long as Construction Lender has satisfied the following conditions prior to the third (3rd) anniversary of the Construction Commencement Date for such Phase:~~

~~(a) Construction Lender has provided City with a copy of any notice of default it sends to~~

~~Developer at the same time it sends such notice to Developer; and~~

~~(b) Construction Lender or an affiliate of Construction Lender has acquired title to or possession of the applicable Phase of the Private Development Projects either as a result of the conclusion of a foreclosure sale or acceptance of a deed in lieu thereof or is in the process of exercising its remedies under the Construction Loan Documents, including without limitation, prosecuting a judicial or nonjudicial foreclosure of the Construction Mortgage, and thereafter diligently prosecutes such foreclosure to completion, which may include acceptance of a deed in lieu of such foreclosure.~~

~~The foregoing provision is for the sole benefit of Construction Lender and shall not constitute a waiver of City's rights to exercise its Right of Reverter against Developer with respect to a default by Developer under Section 23. I. 7.~~

~~Construction Lender shall have the right to transfer title to the applicable Phase of the Private Development Projects acquired as a result of foreclosure sale or acceptance of a deed in lieu of foreclosure to a third party with the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed, on the express condition that such assignee shall, as part of such transfer, assume the obligations of the Developer under this Agreement with respect to the applicable Phase of the Private Development Project(s) so acquired, and shall agree to cause Substantial Completion of such Private Development Project(s) within three (3) years following its acquisition of title to such Phase of the Private Development Project(s).~~

Section 23.2.3 – City Right of Repurchase

23.2.3 City Right of Repurchase. If an Event of Default under Section 23.1.2, Section 23.1.6 or Section 23.1.7 has occurred and (a) Construction Lender has not cured such default or commenced to cure the default in accordance with the provisions of Section 16 above, and (b) the City has given Developer ninety (90) days' written notice of the default, and Developer has not commenced to cure and proceed working toward a cure with diligence within the 90 day period, then the City shall have the right upon written notice to Developer delivered within one year of the end of the ninety day cure period to repurchase all Phases of the Property which are the subject of such default (collectively, the "Repurchase Parcels") for a purchase price equal to ninety percent (90%) of the Purchase Price paid by Developer for the Repurchase Parcels under this Agreement. Closing of the City's repurchase shall occur within one hundred eighty (180) days following written notice of the City's exercise of its repurchase option and Developer will transfer title to the Repurchase Parcels to City by bargain and sale deed, free and clear of all liens and encumbrances except Permitted Exceptions. The Escrow Agent shall conduct the Closing and Closing costs and prorations shall be handled in the same manner as provided in Section 11 of this Agreement. If the City notifies Developer that it intends to repurchase the Repurchase Parcels, but fails to close the repurchase within one hundred twenty (120) days thereafter, City shall not be in default under this Agreement, but Developer shall have the right to sell the Repurchase Parcels to another developer expressly subject, however, to all of the terms, covenants, conditions and provisions set forth in this Agreement~~, including, but not limited to, payment of the mitigation payments set forth in Section 4.2 above~~.

Section 25.1 – Personal Services Contract

25.1 Personal Services Contract. It is Developer's intention to develop the Private Development Projects in accordance with the Project Descriptions provided by Developer to the City. Developer acknowledges that City is relying upon the personal knowledge, expertise and experience of Developer and the Managing Members of its Managing Members~~, Dan Rosenfeld and Paul Keller~~ Preston Butcher, W. Dean Henry, Guy K. Hays and/or Kerry Nicholson, individually or through a trust, in entering into this Agreement. Developer further acknowledges that its rights under this Agreement may not be assigned nor its duties and obligations delegated (except to Construction Lender~~ in accordance with the Approved Financing Plan for the Property~~) prior to the issuance of a Certificate of Completion of the initial phase of the Private Development Projects without the prior written consent of City, which consent may be withheld in its sole and absolute discretion.

Section 25.2 – Restrictions on Transfer of Interests in Developer

25.2 Restrictions on Transfer of Interests in Developer. Developer may (a) sell, transfer, convey or assign interests in Developer or interests in any member or manager of Developer or (b) admit additional or substitute members in Developer or any member or manager in Developer, or (c) change or transfer the ownership interests in any member of Developer or any manager in Developer in accordance with the Approved Financing Plan and so long as ~~Dan Rosenfeld and Paul Keller~~ Preston Butcher, W. Dean Henry, Guy K. Hays and/or Kerry Nicholson, individually or through a trust have a direct or indirect ownership interest in and management control over Developer and any one of ~~each of Dan Rosenfeld, Paul Keller~~ ~~and Ron Merritt~~ Preston Butcher, W. Dean Henry, Guy K. Hays and/or Kerry Nicholson, individually or through a trust have a material and active involvement in the on-going management and development of the Property until after a Certificate of Completion has been issued with respect to the Parcel V and Parcel IV ~~the initial phase of the Private Development~~ Projects. As used in this Agreement, the term "management control" means power to direct or cause the direction of management or policies (whether through ownership of voting interests or securities, by contract, or otherwise). Any other transfer shall require the prior written consent of City, which consent may be withheld by City in its sole and absolute discretion.

Section 25.4 – No Assignment of Agreement

25.4 No Assignment of Agreement. Developer shall not voluntarily or involuntary sell, transfer, convey, assign or otherwise dispose of its rights under this Agreement, in whole or in part prior to the issuance of a Certificate of Completion of the ~~initial phase of the Private Development~~ Parcel IV and Parcel V Projects, without the prior written consent of City, which consent may be withheld in its sole and absolute discretion. City acknowledges that Developer may assign its rights under this Agreement to Construction Lender or to an entity over

which it exercises management control without the City's prior written consent, solely in connection with the Approved Financing Plan for the Property.

Section 27.11.1 – Representatives of Developer

27.11.1 Representatives of Developer. Developer shall consult with City on initial assignments of personnel assigned to the Private Development Projects. Developer agrees that the person with overall responsibility for the work for the Private Development Projects shall be ~~Dan Rosenfeld~~ Kerry Nicholson. The Project Manager shall be ~~John Schwartz~~ Kathryn Armstrong. Developer shall notify City of any proposed change in the personnel named above. In the event the personnel named above are replaced with individuals which do no have similar expertise to Kerry Nicholson and Kathryn Armstrong, City shall have the right to approve such changes in the personnel named above, such approval not to be unreasonably withheld.

Section 27.12 - Notices

27.12 Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either party hereto by the other party, shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal service, three (3) days after it is deposited in the United States mail, first-class postage prepaid, certified or registered, return receipt requested, addressed as follows, or sent via facsimile transmission with machine confirmation of receipt followed by a "hard copy" mailed regular mail, within one (1) business day to the fax number listed as follows:

City:
City of Burien
~~415~~400 SW ~~150th~~ 152nd St., Suite 300
Burien, Washington 98166
Attn: ~~David Cline~~ Mike Martin
~~Assistant to the~~ City Manager
Telephone: (206) ~~439-3164~~ 248-5503
Facsimile: (206) 248-5539

With a copy to:
City of Burien
~~415~~400 SW ~~150th~~ 152nd St., Suite 300
Burien, Washington 98166
Attn: City Attorney
Telephone: (206) 248-~~4647~~5535
Facsimile: (206) 248-5539

With a copy to: ~~Preston Gates & Ellis~~ Davis Wright Tremaine LLP
~~925 Fourth~~ 1201 Third Avenue, Suite ~~2900~~ 2200
Seattle, Washington ~~98104-1158~~ 98101-3045
Attn: ~~Jay Reich~~ James A. Greenfield
Telephone: (206) ~~623-7580~~ 757-8055
Facsimile: (206) ~~623-7022~~ 757-7055

~~With a copy to: Shiels Obletz Johnsen, Inc.~~
~~700 Fifth Avenue, Suite 2475~~
~~Seattle, WA 98104-5052~~
~~Attn: Ken Johnsen~~
~~Telephone: (206) 233-3905~~
~~Facsimile: (206) 386-1831~~

Developer: ~~Urban Ventures Burien, LLC~~
~~The Bradbury Building~~
~~304 S. Broadway, Suite 400~~
~~Los Angeles, California 90013~~
Attn: ~~Dan Rosenfeld~~, Principal
Telephone: ~~(213) 437-0470~~
Facsimile: ~~(213) 437-0474~~

c/o Legacy Partners Residential, Inc.
7525 SE 24th Street, Suite 180
Mercer Island, WA 98040
Attn: Mr. Kerry Nicholson
Telephone: (206) 275-4060
Facsimile: (206) 275-4059

With a copy to: Schultz & Wright, LLP
545 Middlefield Rd., Suite 160
Menlo Park, CA 94025
Attn: Anne Keeler Wright, Esq.
Telephone: (650) 462-0900
Facsimile: (650) 462-0998

With a copy to: ~~Thomas A. Barkewitz~~
~~Alston, Courtnage & Bassetti LLP~~
~~1000 Second Avenue, Suite 3900-3650~~
~~Seattle, Washington 98104-7600~~
Telephone: ~~(206) 623-7600~~
Facsimile: ~~(206) 623-1752~~

Either party may change its address for the purposes of this Section by giving written notice of such change to the other party in the manner provided in this Section.

Exhibit L

Exhibit L shall be revised to read as follows:

EXHIBIT L
Form of Certification of Completion

After recording return to:
Legacy Partners Residential, Inc.
7525 SE 24th Street, Suite 180
Mercer Island, WA 98040
Attn: Mr. Kerry Nicholson

CERTIFICATE OF COMPLETION

GRANTOR: CITY OF BURIEN, a Washington municipal corporation
GRANTEE: [LEGACY PARTNERS RESIDENTIAL, LLC, a Delaware limited liability company]

Legal Description:

Abbreviated Form:

(Additional legal on Exhibit A)

Assessor's Tax Parcel No(s):

Related Document: Bargain and Sale Deed, Recording No. __ _

The CITY OF BURIEN, a Washington municipal corporation ("City"), certifies that [LEGACY PARTNERS RESIDENTIAL, LLC, a Delaware limited liability company] ("Developer"), has satisfactorily completed construction of that portion of the Private Development Projects located on the real property legally described on Exhibit A attached hereto (the "Property"), as described in that certain Disposition and Development Agreement (Parcels I, IV, V and VI) dated June29, 2005, as amended (the "Development Agreement"), The Property was conveyed by City to Developer's predecessor pursuant to a Bargain and Sale Deed (with Right of Reverter) dated December 21, 2007, and recorded on December 21, 2007 in the Official Records of King County, Washington under Recording No. 20071221000276 (the "Harbor Urban Deed") and conveyed by Developer's predecessor to Developer pursuant to a Bargain and Sale Deed (with Right of Reverter) dated _____, 2013, and recorded on _____ , 2013 in the Official Records of King County, Washington under Recording No. _____. Pursuant to the amended Development Agreement, the City terminated the Right of Reverter on

_____, 2013 by an instrument recorded on _____, 2013 in the Official Records of King County, Washington under Recording No. _____.

All capitalized terms not otherwise defined in this Certificate will have the same meaning given such terms in the Development Agreement.

This Certificate of Completion is a conclusive determination that the Developer has satisfied each of the agreements, covenants and conditions contained in the Development Agreement as to the development of the Phase of the Private Development Projects located on the Property.

Nothing contained in this Certificate shall constitute a termination of the Development Agreement or release or waiver of any rights regarding the Private Development Projects described in the Development Agreement.

CITY OF BURIEN, a Washington
municipal corporation

By: _____
Name:
Its: _____
Date:

[ACKNOWLEDGMENT]

EXHIBIT B

Conceptual Design for Phase II

CHARACTERISTICS OF THE DEVELOPMENT

The following describes the overall characteristics of the proposed development of Parcels IV, V and VI.

Parcels IV, V & VI:
The development of Parcels IV, V and VI will bring new people and energy, contributing to the success and vitality of the Burien Town Square redevelopment and the surrounding neighborhood. The proposed development will be designed to provide desirable, attractive, affordable and livable places to live, work and shop. The plan includes retail and residential units, parking and potential commercial uses. The projects will feature high-quality design and construction that will enhance the surrounding community. Parcel V will be the first phase of this development, consisting of a mixed-use structure with residential units, residential amenity spaces, retail lease space, and structured parking. Parcel IV is planned for a mix of retail, commercial, and/or residential uses. Parcel VI, the smallest of the three parcels, will likely remain undeveloped until it can be combined with adjacent parcels for a larger development.

New buildings will complement and extend the existing amenity-rich environment. Parcels IV and V will include retail and/or live-work tenant spaces along 5th Avenue SW with large windows looking onto the street to provide an appealing and active pedestrian experience. The building environment will be enhanced with high-quality building materials and attractive façades. New on-site residents will help Burien Town Square evolve into an urban destination as well as support new and existing retail. We anticipate that the total development of Parcels IV and V will include 150 to 350 residential units but higher density is a possibility.

Parking will be provided on Parcels IV & V within structured parking garages and may include some limited surface parking. Parking requirements for Parcel VI will be based on the development plan for property west of 6th Avenue SW.

Parcel V (Town Square Phase II/Legacy Phase 1)
The proposed development on Parcel V is a five to six-story mixed-use building with ground-related uses. Retail and/or live-work spaces will be located along 5th Avenue SW. The southeast corner facing the park will be a focal point and the location for the primary residential entry and a small retail use. Amenity spaces for the residents, including a leasing office, meeting/lounge/entertainment space and a fitness center, are planned for the ground level. These spaces near the building entry will be activated by people, bringing energy to this key corner and generating pedestrian activity in and around the public open spaces nearby.

The above grade structured parking along SW 150th Street and 6th Avenue SW will be enhanced with a combination of different textural surfaces, decorative screening, landscaping and "green screen" trellises, artwork and/or special lighting. Sitting areas will also be provided along the sidewalks.

Access for parking is planned at two locations: near the northeast corner on SW 150th Street and near the southwest corner on 6th Avenue SW. The retail/parking base structure of the building will occupy most of the lower level of the building. The west side of the garage will be partially below grade.

The upper levels are planned for approximately 140 to 180 residential units. Many of the units will face a large landscaped courtyard located at the first level of residential units. This outdoor space will accommodate active uses such as "pea-patch" gardens, barbecue, recreation and lounge areas. Because the building will be shaded by the existing project to the south, the façade will step down to allow sunlight to penetrate into the interior landscaped garden areas.

The massing of the building will complement its surroundings and add interest to Burien's skyline. The building will be designed with varying rooflines, articulated and modulated facades, and design features that add visual interest to the building including features such as decks and bay windows. The design will incorporate a range of high-quality building materials along all building facades; these will likely include masonry, stucco, hardy and cera-clad siding, and architectural metal panel. The windows will be generous, allowing maximum daylight into the residences.

The residential units will range in size and most will have decks or patios that open to the outdoors. Live-work units will be located along 5th Avenue SW and the design will allow the units to convert to retail spaces if there is market demand. Canopies or awnings will provide weather protection on the pedestrian-oriented streets along sidewalks of at least 33% of the building's front face.

The project will incorporate a variety of sustainable features using the Built Green or LEED criteria benefitting the residents as well as the environment. Examples of some of these features include low impact development methods using natural storm-water infiltration, interior finish materials with recycled content and low toxicity, energy efficient windows and appliances, bicycle storage, and edible plant gardens.

Parcel IV (Town Square Phase III/Legacy Phase 2)

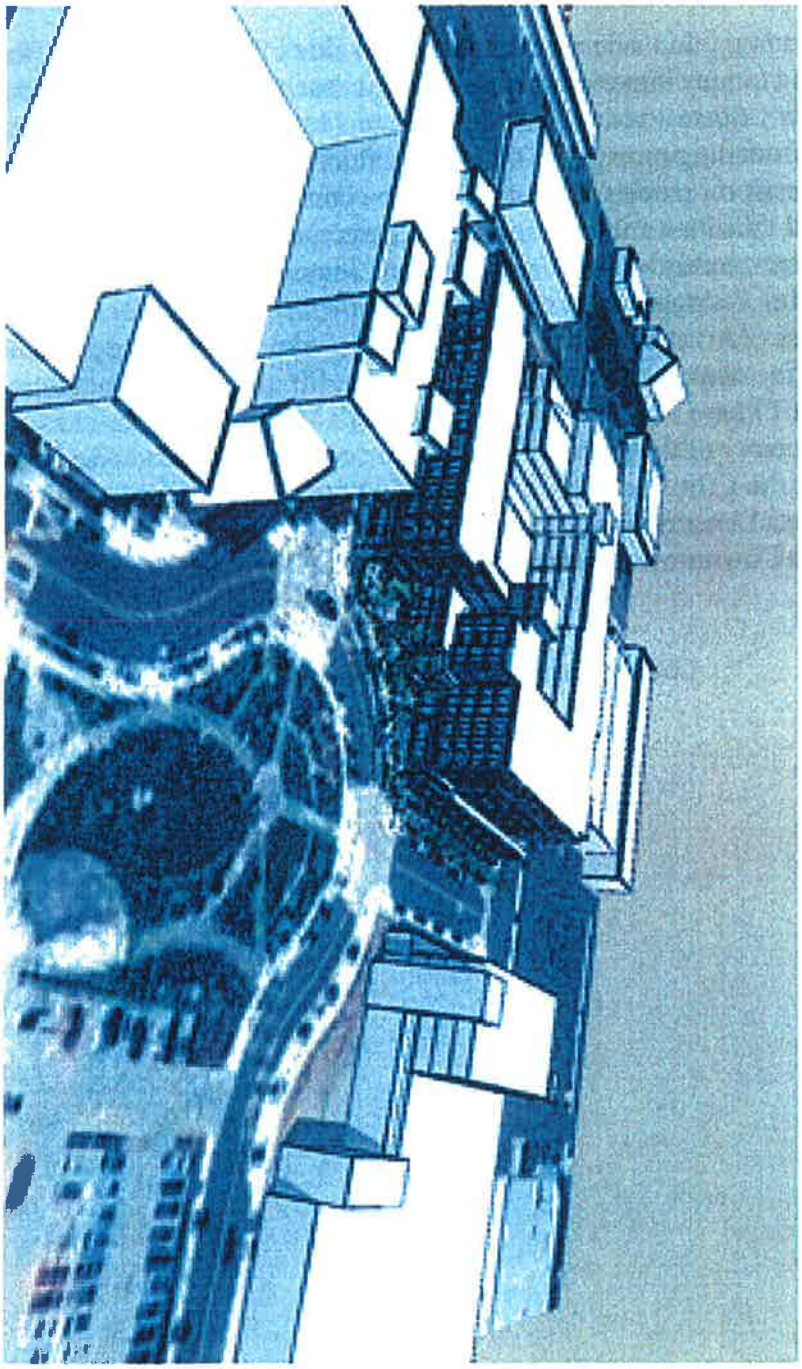
Parcel IV is planned as a mixed-use building(s) which may include both residential and commercial components. The site slopes down towards 4th Avenue SW where a lower level of commercial space could accommodate other uses along this important pedestrian and transit corridor. Retail and/or live-work spaces are planned along 5th Avenue SW, complementing the development on Parcel V to the west and strengthening the north-south connections. Retail, commercial or other active uses -- which may include hotel or office -- are planned for the eastern side of the site. Parking on this site is anticipated to be primarily underground with some surface or above-grade parking possible. Access will probably be from SW 151st Street (lower level) with additional parking accessed from SW 150th Street near the northwest corner of the site; however preferred parking access locations may change depending on uses. The massing of the building(s) will complement the other structures in the Town Square with modulated facades and variation in exterior materials and colors to enhance the scale and character of the proposed project.

The existing public space adjacent to the SW corner of Parcel IV is approximately four-thousand square feet. The City and the Developer will work cooperatively to determine possible uses and amenities for this space that complement other uses in and around the Town Square area.

Parcel VI

Parcel VI is a long, thin land parcel on the west side of 6th Avenue SW. Because of the parcel's small size and unique dimensions it has limited capacity for high density development consistent with the Town Square vision. The highest and best use for this parcel is to combine it with sufficient surrounding property to allow for a future project that is more consistent with the scale of developments on parcels I, IV and V. The combination of Parcel VI with other land in the vicinity would facilitate the creation of a larger mixed-use development consistent with the emerging urban context of the neighborhood. Interim uses of this parcel could also include surface parking, a staging area for construction of Parcels IV or V, green space and other temporary uses. An interim use would include some landscaping to enhance the site while recognizing the temporary nature of the use. If, after 2 years following the Substantial Completion of Phase II (Parcel V) and Phase III (Parcel IV), there has been no acquisition of additional property or the property has not been combined with an adjacent parcel, the Developer will submit to the City, and the City will duly consider, an Alternate Permanent Development Plan and Project Description for Phase IV (Parcel VI) that is consistent with the range of uses available in the Downtown Commercial Zone at that time.

Conceptual Design Depictions on Following Pages:



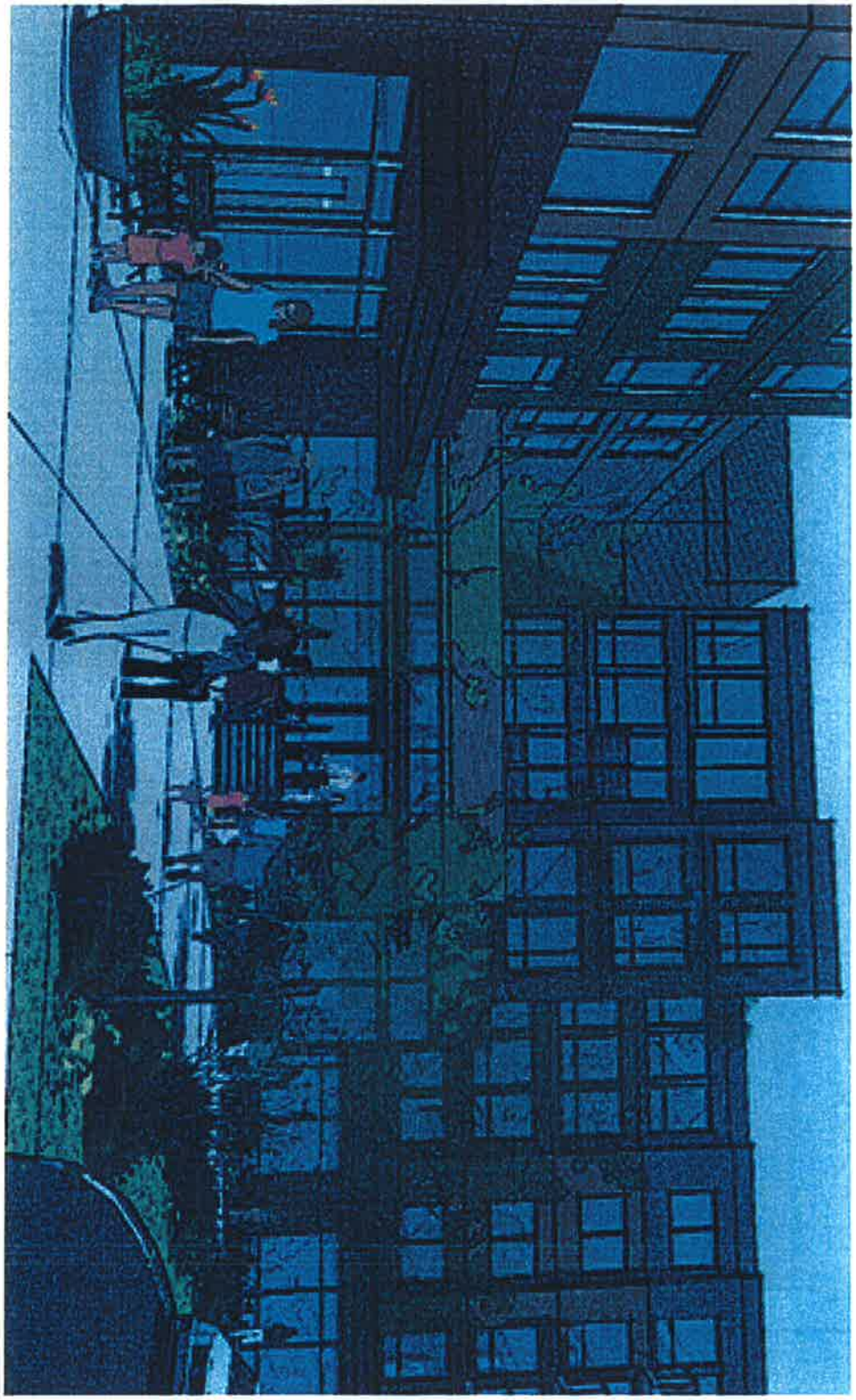


EXHIBIT C

Project Schedule for Phases II, III, and IV

Kickoff Date:

For the purposes of the DDA and this Amendment, the "Kickoff Date" means the effective date of this Amendment No. 8.

Phase II (Parcel V)

i. Submission of Conceptual Design Documents for Phase II

   a. Kickoff Date plus 90 days

ii. Submission of Building Permit Application and drawing set to the City for Phase II (Parcel V) permit review

   a. Kickoff Date plus 270 days

iii. Commencement of Construction (Starting excavation will be considered beginning construction)

   a. Kickoff Date plus 375 days

iv. Substantial Completion of Phase II (Parcel V).

   a. 540 days following Commencement of Construction for Phase II

Phase III (Parcel IV)

i. Submission of Conceptual Design Documents

   a. 445 days following the Substantial Completion of Phase II

ii. Submission of Building Permit Application

   a. 625 days following the Substantial Completion of Phase II

iii. Commencement of Construction

   a. 730 days following the Substantial Completion of Phase II

iv. Substantial Completion of Phase III (Parcel IV).

   a. 540 days following Commencement of Construction of Phase III

Phase IV (Parcel VI)

Parcel VI may have interim or short-term uses prior to its permanent development. Parcel VI may also be combined with other parcel(s) within the Downtown Commercial Zone for future development to occur within six years of the substantial completion of Legacy Phase One.