

**CITY OF BURIEN  
AGENDA BILL**

<b>Agenda Subject:</b> Motion to Approve Town Square Settlement Agreement w/RECP/UP & Purchase Agreement Amendment w/Legacy		<b>Meeting Date:</b> June 17, 2013
<b>Departments:</b> City Manager and Legal	<b>Attachments:</b> (1) RECP/UP settlement agreement (2) Amendment to Legacy purchase agreement (3) Joint public statement	<b>Fund Source:</b> General Fund <b>Activity Cost:</b> Approx. \$424,000 <b>Amount Budgeted:</b> \$500,000 <b>Unencumbered Budget Authority:</b> \$0
<b>Contact:</b> Mike Martin/Craig Knutson		
<b>Telephone:</b> (206) 248-5508		
<b>Adopted Work Plan Priority:</b> Yes X No	<b>Work Plan Item Description:</b> Town Square Redevelopment	
<p><b>PURPOSE/REQUIRED ACTION:</b> The purpose of this agenda item is for the Council to consider agreements with RECP/UP and Legacy Partners that will resolve pending lawsuit claims and provide for transfer/development of the remaining Town Square parcels.</p> <p><b>BACKGROUND (Include prior Council action &amp; discussion):</b> In 2002 the City purchased the Town Square property and in 2005 sold it to Urban Ventures Burien, LLC (now RECP/UP Burien II, LP or "RECP/UP") pursuant to a Disposition and Development Agreement ("DDA").</p> <p>RECP/UP chose to develop the property in phases, completed the first phase on July 21, 2009, and was required to commence construction of the next phase by July 21, 2011. RECP/UP did not meet that deadline, and the City proceeded to exercise its right under the DDA to either repurchase the remaining undeveloped parcels at the Repurchase Price established in the DDA (90% of the price paid by RECP/UP's predecessor or \$2,594,100).</p> <p>After entering into a Standstill Agreement and trying unsuccessfully to negotiate new development terms with RECP/UP, the City directed RECP/UP to convey the remaining parcels to Legacy Partners LLC. After RECP/UP refused to do so, the City sued and RECP/UP countersued. The parties mediated the dispute on May 29<sup>th</sup>, which resulted in the attached settlement agreement. Under the settlement agreement, RECP/UP will convey the remaining parcels to the City or Legacy for the Repurchase Price <u>plus</u> \$100,000 for producing deliverables under the Standstill Agreement <u>plus</u> an additional \$575,846.</p> <p>To accomplish the City's preferred option of the remaining parcels being conveyed directly to Legacy, the purchase agreement between the City and Legacy needs to be amended to extend the closing date and to provide for Legacy contributing \$150,000 of the increased purchase price in addition to the \$100,000 deliverables cost that Legacy previously agreed to pay.</p> <p><b>OPTIONS (Including fiscal impacts):</b></p> <ol style="list-style-type: none"> <li>1. Approve the two agreements (will authorize settlement of the lawsuit and transfer of the remaining Town Square parcels to Legacy Partners).</li> <li>2. Do not approve the two agreements (will continue the pending Town Square litigation).</li> </ol>		
<b>Administrative Recommendation:</b> Approve the two proposed agreements.		
<b>Committee Recommendation:</b> N/A		
<b>Advisory Board Recommendation:</b> N/A		
<b>Suggested Motion:</b> I move approval of the Town Square settlement agreement with RECP/UP and the amendment to the Town Square purchase agreement with Legacy Partners.		
Submitted by: Craig Knutson and Mike Martin		
<b>Administration</b>	<b>City Manager</b>	
<b>Today's Date:</b> June 12, 2013	<b>File Code:</b> R:\CC\Agenda Bill.Town Square settlement agreement.doc	

## CR2A AGREEMENT

The City of Burien and RECP/UP Burien II, LP, in order to settle all claims and causes of action in City of Burien v. RECP/UP Burien II, LP, King Co. Cause No. 13-2-14483-2 KNT, and all claims and causes of action described in any claim that RECP has filed with the City, agree as follows:

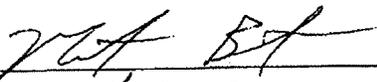
1. RECP will convey all parcels under its ownership described in the DDA to (at the City's option) the City, Legacy Partners Residential LLC, or another third party designated by the City. The conveyance shall be by bargain and sale deed.
2. The sale price to be paid by the purchaser will be the Repurchase Price as the term is defined in the DDA, which the parties agree is \$2,594,154. In addition, the purchaser will pay the lesser of \$100K or the actual reasonable third party costs incurred by RECP after June 27, 2012 in producing the Deliverables, as provided in Par. 5 of the Standstill. Regardless of whether the purchaser is the City or a third party, the City agrees that the sale price and all other payments described in this Agreement will be made to RECP upon the closing of the transaction, which shall occur no later than the closing date set forth below.
3. In addition to the foregoing, the City of Burien shall pay \$575,846 to RECP upon the closing of the transaction, on the date of closing, such that the total consideration paid to RECP on closing shall be \$3,170,000 plus the lesser of \$100K or the actual reasonable third party costs incurred by RECP after June 27, 2012 in producing the Deliverables.
4. Terms of sale –
  - a. The title will be free and clear of all encumbrances except for permitted exceptions as defined in the DDA and the two Property Tax Exemption Agreements between the City and RECP recorded on May 5, 2009.
  - b. Costs of the transaction will be allocated as per DDA Sec. 11. The City and RECP will each pay one half of the real estate excise tax on the sale price of the property.
  - c. Closing shall occur on a date selected by the City, which date shall be within 120 days of the date on which the City Council approves the settlement.
  - d. The closing will be handled by the escrow agent identified in the DDA and the escrow agent will conduct the closing in the manner set forth in Sec. 11 of the DDA.
5. If the conveyance is to an entity other than the City, RECP will assign the DDA and the Work Product to the grantee per Par. 5 of the Standstill Agreement without representations or warranties of any kind. If conveyance is to the City, RECP will assign the Work Product to the City, again without representations or warranty of any kind.

6. The parties will execute broad mutual releases of each other and their agents and representatives. Subject to Legacy's agreement to do the same for RECP, RECP also will execute a broad mutual release of Legacy and its agents and representatives.
7. RECP will permit the nonprofit to use Parcels IV and V for the Strawberry Festival on reasonable terms.
8. The parties intend this document to be an enforceable, CR2A agreement. The parties intend to prepare more formal documentation of this agreement but intend in any event that this CR2A Agreement shall be a final, binding and enforceable agreement.
9. This CR2A Agreement is subject to approval by the City Council of the City of Burien in open session as required by state law.
10. In the event of a dispute regarding the final documentation of this Agreement, the dispute will be submitted to binding arbitration, before Stew Cogan as arbitrator.
11. In the event of a dispute under this Agreement (other than a dispute to be resolved by Stew Cogan as arbitrator under Paragraph 10 above), the prevailing party will be entitled to reimbursement by the non-prevailing party of the prevailing party's reasonable costs and attorneys' fees.
12. The parties will release a joint public statement that the parties have reached agreement on a resolution of their claims, and neither party will issue any statement to the press or otherwise in connection with the DDA, the property or this agreement that would reflect negatively on the other party.

It is so agreed.

Dated May 29, 2013

RECP/UP BURIEN II, LP

By   
Its Manager

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Paul R. Taylor  
Byrnes Keller Cromwell  
Attorneys for RECP/UP BURIEN II, LP

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It is so agreed.

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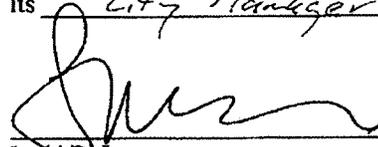
RECP/UP BURIEN II, LP

By \_\_\_\_\_  
Its \_\_\_\_\_

  
\_\_\_\_\_  
Paul R. Taylor  
Byrnes Keller Cromwell  
Attorneys for RECP/UP BURIEN II, LP

CITY OF BURIEN

By *Mike Monte*  
Its *City Manager*



Ladd D. Leavens  
Davis Wright Tremaine LLP  
Attorneys for City of Burien

**FIRST AMENDMENT  
TO  
AGREEMENT TO PURCHASE REAL ESTATE AND ACCEPT ASSIGNMENT  
OF DISPOSITION AND DEVELOPMENT AGREEMENT**

This First Amendment to Agreement to Purchase Real Estate and Accept Assignment of Disposition and Development Agreement is made as of June 17, 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**"), with reference to the following:

**WHEREAS**, Legacy and the City are parties to that certain Agreement dated effective as of February 26, 2013 (the "**Agreement**");

**WHEREAS**, the City and Legacy have agreed to enter into this First Amendment to set forth their agreement regarding the matters set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Legacy and the City hereby agree to the following:

1. Terms. All initially capitalized terms which are used in this First Amendment, but not otherwise defined herein, shall have the same meanings as ascribed thereto in the Agreement.

2. Purchase Price. The Section 3 of the Amendment is hereby deleted and replaced with the following:

"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) THREE MILLION ONE HUNDRED SEVENTY THOUSAND DOLLARS (\$3,170,000), 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)(the "**Deliverables Amount**") (such sum being the "**Purchase Price**"). At Closing Legacy shall pay the amount equal to the sum of TWO MILLION SEVEN HUNDRED FORTY-FOUR THOUSAND ONE HUNDRED FIFTY FOUR DOLLARS (\$2,744,154) plus the Deliverables Amount to Harbor Urban toward the Purchase Price (such sum being the "**Legacy Purchase Price**"). The City shall cause the Deposit (as defined below) to be credited against the Legacy Purchase Price paid in cash to Harbor Urban at Closing. In addition, at Closing the City shall pay the amount equal to the Purchase Price less the Legacy Purchase Price (the "**City Contribution**"), to be credited against the Purchase Price paid in cash to Harbor Urban at Closing."

3. Closing. The first sentence of Section 8 of the Agreement is hereby deleted and replaced with the following: "Closing shall occur on the date (the "**Closing Date**") which is ninety (90) days after the City Council approves a Settlement Agreement with Harbor Urban related to the Property and the transaction contemplated herein, provided that Legacy may elect

for the Closing Date to be earlier than such date by delivering not less than 30 days' advance written notice to the City of such earlier date ." In addition, Section 8 of the Agreement is hereby modified to delete the requirement that the City give Legacy not less than 30 days' advance notice to Legacy of the Closing Date. The references to "June 1, 2013" in Section 8 of the Agreement are hereby deleted and replaced with references to "the date which is 120 days after the date on which the City Council approves a Settlement Agreement with Harbor Urban related to the Property and the transaction contemplated herein (the "**Settlement Agreement**"), or, in the event the Settlement Agreement is not approved by the City Council, October 22, 2013".

4. Harbor Urban/Legacy Mutual Release. The Settlement Agreement includes Harbor Urban's obligation to release Legacy, its agents and representatives from liability, subject to Legacy's agreement to similarly release Harbor Urban, its agents and representatives. City and Legacy acknowledge that this release will be formally documented in a subsequent instrument. Legacy agrees that it will in good faith negotiate such a broad mutual release with Harbor Urban and will execute a form of mutual release that is reasonably acceptable to both Legacy and Harbor Urban. The City, in turn, will exercise its reasonable efforts to encourage Harbor Urban to negotiate the broad mutual release with Legacy in good faith.

5. Agreement Ratified. In all other respects, except as otherwise provided by this First Amendment, the undersigned hereby ratify and confirm the Agreement which remains in full force and effect.

6. Counterparts. This First Amendment may be executed in counterparts, each of which shall be deemed an original and all of said counterparts shall constitute but one and the

same instrument. Signatures delivered via facsimile or other electronic means shall be accepted as if original.

**IN WITNESS WHEREOF**, the parties have executed this First Amendment to be effective as of June 17, 2013.

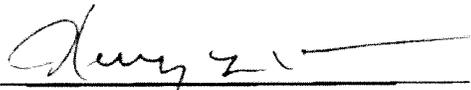
**CITY:**

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  Kerry L. Nicholson  
Its Senior Managing Director



**FOR IMMEDIATE RELEASE**

**Media Contacts:**

Dan Trimble, City of Burien (206) 248-5528

Jim Atkins, RECP/UP Burien (206) 753-2410

**City of Burien and RECAP/UB Burien LLC Reach Settlement Agreement  
*Moving Forward in Spirit of Community Development***

Burien, WA – June 17, 2013 - Today, the City of Burien and RECP/UP Burien II LP, owner of three undeveloped parcels at Burien Town Square have reached a settlement agreement related to the sale of the three referred to as Town Square properties.

The undeveloped Town Square parcels are north of the current Town Square condominiums and Burien Library/City Hall between SW 152<sup>nd</sup> and SW 150<sup>th</sup> streets. RECP/UP Burien II LP includes the developer and a capital partner that jointly own the properties.

Under the settlement agreement, RECP/UP Burien II LP will sell the properties back to the City of Burien or a third party designated by the City of Burien. In addition, the City of Burien will reimburse RECAP/UP II LLP for planning and design expenses incurred by the owner/developer over the past year.

“The City of Burien has engaged its community in a downtown master plan that will benefit the entire city,” said Matthew Burton, managing principal for UP Burien II LLC. “With time and the right fit, we believe the City will be successful”

The settlement agreement was unanimously [need to provide vote] by the Burien City Council on June 17, 2013.

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