CITY OF KIRKLAND

CITY COUNCIL

James Lauinger, Mayor • Joan McBride, Deputy Mayor • Dave Asher • Mary-Alyce Burleigh
Jessica Greenway • Tom Hodgson • Bob Sternoff • David Ramsay, City Manager

123 Fifth Avenue • Kirkland, Washington 98033-6189 • 425.587.3000 • TTY 425.587.3111 • www.ci.kirkland.wa.us

AGENDA
KIRKLAND CITY COUNCIL MEETING
City Council Chamber
Tuesday, January 17, 2006
6:00 p.m. – Study Session – Peter Kirk Room
7:30 p.m. – Regular Meeting

COUNCIL AGENDA material is available for public review at the Public Resource Area at City Hall or at the Kirkland Library on the Friday afternoon prior to the City Council meeting. Information regarding specific agenda topics may also be obtained from the City Clerk's Office on the Friday preceding the Council meeting. You are encouraged to call the City Clerk's Office (587-3190) or the City Manager's Office (587-3001) if you have any questions concerning City Council meetings, City services, or other municipal matters. The City of Kirkland strives to accommodate people with disabilities. Please contact the City Clerk's Office at 587-3190, or for TTY service call 587-3111 (by noon on Monday) if we can be of assistance. If you should experience difficulty hearing the proceedings, please bring this to the attention of the Council by raising your hand.

EXECUTIVE SESSIONS may be held by the City Council to discuss matters where confidentiality is required for the public interest, including buying and selling property, certain personnel issues, and lawsuits. An executive session is the only type of Council meeting permitted by law to be closed to the public and news media

ITEMS FROM THE AUDIENCE provides an opportunity for members of the public to address the Council on any subject which is not of a quasi-judicial nature or scheduled for a public hearing. (Items which may not be addressed under Items from the Audience are indicated by an asterisk*.) The Council will receive comments on other issues, whether the matter is otherwise on the agenda for the same meeting or not. Speaker's remarks will be limited to three minutes apiece. No more than three speakers may address the Council on any one subject. However, if both proponents and opponents wish to speak, then up to three proponents and up to three opponents of the matter may address the Council.

P - denotes a presentation from staff or consultant

1. *CALL TO ORDER*
2. *ROLL CALL*
3. *STUDY SESSION,* Peter Kirk Room
   a. Joint Meeting with Design Review Board
4. *EXECUTIVE SESSION*
5. *SPECIAL PRESENTATIONS*
6. *REPORTS*
   a. *City Council*
      (1) Appointments to City Council Committees
      (2) Regional Issues
   b. *City Manager*
      (1) 2006 Legislative Status Report
      (2) Neighborhood Meeting Format
      (3) Calendar Update
7. *COMMUNICATIONS*
   a. *Items from the Audience*
   b. *Petitions*

CONSENT CALENDAR consists of those items which are considered routine, for which a staff recommendation has been prepared, and for items which Council has previously discussed and no further discussion is required. The entire Consent Calendar is normally approved with one vote. Any Council Member may ask questions about items on the Consent Calendar before a vote is taken, or request that an item be removed from the Consent Calendar and placed on the regular agenda for more detailed discussion.

GENERAL CORRESPONDENCE Letters of a general nature (complaints, requests for service, etc.) are submitted to the Council with a staff recommendation. Letters relating to quasi-judicial matters (including land use public hearings) are also listed on the agenda. Copies of the letters are placed in the hearing file and then presented to the Council at the time the matter is officially brought to the Council for a decision.

PUBLIC HEARINGS are held to receive public comment on important matters before the Council. You are welcome to offer your comments after being recognized by the Mayor. After all persons have spoken, the hearing is closed to public comment and the Council proceeds with its deliberation and decision making.

8. CONSENT CALENDAR

a. Approval of Minutes: January 3, 2006

b. Audit of Accounts:

Payroll $

Bills $

c. General Correspondence

d. Claims

(1) Paul Fernandes

(2) Bill Gragg

(3) Daniel Stapleton

e. Authorization to Call for Bids

f. Award of Bids

g. Acceptance of Public Improvements and Establishing Lien Period

(1) NE 126th Place/128th Lane NE Erosion Control Project

h. Approval of Agreements

i. Other Items of Business

(1) ARCH Housing Trust Fund Recommendations for Fall 2005

(2) 2006 ARCH Work Program and Budget

(3) Resolution R-4544, Relinquishing the City's Interest in a Portion of Unopened Alley

9. PUBLIC HEARINGS

a. Lake Washington School District No. 414 Ballot Measures:

(1).a. Lake Washington School District No. 414 Proposition No. 1 Replacement of Existing Educational Programs and Operations Levy

The Board of Directors of Lake Washington School District No. 414 approved Resolution Nos. 1967 and 1971, authorizing an educational programs and operations levy for education. This proposition authorizes the District to levy the following excess taxes, in place of an expiring levy, on all taxable property within the District, to support the District's educational programs, maintenance and operations:

P - denotes a presentation from staff or consultant

Collection Years	Approximate Levy Rate/$1,000 Assessed Value	Levy Amount
2007	$1.27	$37,000,000
2008	$1.27	$38,200,000
2009	$1.28	$40,300,000
2010	$1.28	$42,000,000

Should this proposition be approved
YES [ ]
NO [ ]

ORDINANCES are legislative acts or local laws. They are the most permanent and binding form of Council action, and may be changed or repealed only by a subsequent ordinance. Ordinances normally become effective five days after the ordinance is published in the City's official newspaper.

RESOLUTIONS are adopted to express the policy of the Council, or to direct certain types of administrative action. A resolution may be changed by adoption of a subsequent resolution.

(1).b. Resolution R-4545, Stating the City Council's Support for Lake Washington School District No. 414's Proposition No. 1 Replacement of Existing Educational Programs and Operations Levy

(2).a. Lake Washington School District No. 414 Proposition No. 2 Replacement of Existing Capital Projects Levies

The Board of Directors of Lake Washington School District No. 414 approved Resolution Nos. 1968 and 1972, authorizing educational facilities and technology levies. This proposition authorizes the improvement and upgrade of District Facilities; including educational technology, software and training; building and site improvements; and authorizes the following excess levies for such purposes on all taxable property within the District:

Collection Years	Approximate Levy Rate/$1,000 Assessed Value	Levy Amount
2007	$0.53	$15,200,000
2008	$0.53	$15,900,000
2009	$0.53	$16,600,000
2010	$0.52	$17,000,000

All as provided in District Resolution Nos. 1968 and 1972. Should this proposition be approved?

YES [ ]
NO [ ]

(2).b. Resolution R-4546, Stating the City Council's Support for Lake Washington School District No. 414's Proposition No. 2 Replacement of Existing Capital Projects Levy

(3).a. Lake Washington School District No. 414 Proposition No. 3 General Obligation Bonds - $436,000,000

P - denotes a presentation from staff or consultant

The Board of Directors of Lake Washington School District No. 414 approved Resolution Nos. 1969 concerning this proposition for bonds. This proposition authorizes the District to modernize Lake Washington High, Finn Hill and Rose Hill Junior Highs, Bell, Frost, Keller, Muir, Rush, Sandburg and Community Elementary Schools and International Community School, construct and equip a new elementary school and make other capital improvements; to issue $436,000,000 of general obligation bonds maturing within a maximum term of 2o years; and to levy excess property taxes annually to repay the bonds, as described in Resolution No. 1969. Should this proposition be:

APPROVED? [ ]
REJECTED? [ ]

(3).b. Resolution R-4547, Stating the City Council's Support for Lake Washington School District No. 414's Proposition No. 3 General Obligation Bonds - $436,000,000

b. Ordinance No. 4034 and its Summary, Approving a Development Agreement with Coventry II DDR Totem Lake, LLC, for Redevelopment of the Totem Lake Mall

10. UNFINISHED BUSINESS

a. Transportation Commission Recommendation for Approving Speed Limit Policy

b. Ordinance No. 4032, Relating to Sewer Main Extensions and Amending Sections of the Kirkland Municipal Code

NEW BUSINESS consists of items which have not previously been reviewed by the Council, and which may require discussion and policy direction from the Council.

11. NEW BUSINESS

a. Ordinance No. 4033 and its Summary, Amending Title 26 of the Kirkland Municipal Code Relating to Telecommunications and Cable Services

b. Relating to Home Occupations

c. Reviewing Single Family Floor Area Ratios

12. ANNOUNCEMENTS

13. ADJOURNMENT

P - denotes a presentation from staff or consultant

CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.587-3225
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Jeremy McMahan, Planning Supervisor
Eric Shields, Planning Director

Date: January 5, 2006

Subject: Design Review Board January 17, 2006 Joint Meeting with City Council

RECOMMENDATION

Conduct joint meeting with the Design Review Board. The DRB would like to use this opportunity to:

- Briefly illustrate the range of projects reviewed
- Discuss some of the key issues that the DRB considers in project review
- Suggest design guidelines that could improve the process and products.

The DRB would also appreciate Council feedback on Design Review projects or process.

BACKGROUND

The last joint meeting was held in 2002. Since that time, the DRB has been expanded from five to seven members, the design review process has expanded to more neighborhoods (Totem Lake, North Rose Hill, and 85th Street), and a number of projects have been built or are under construction.

Enclosed is a summary of projects that have been through the Design Review process, including project images and data. The DRB does not intend to review all projects at the joint meeting, but will use project examples to illustrate discussion points.

Attachments:

1. Project Data
2. Project Images and Information

Design Board Review Project Data

Project	File #	Planner	Location	# Residential Units	New Retail s.f.	New Office s.f.	# hotel rooms	# parking stalls	Parcel size (square feet)	Estimated completion	Notes	Status
Central Printing/Bienz Addition/remodel	ADR00-00003	AR	424 Central Way	1	1,200	1,600	0	8	5,400	NA	New owner	Expired
Park Place Expansion	ADR00-00006	TS	457 Central Way	50	73,175	202,300	0	858	482,143	NA		Expired
HNW Marketing Addition	ADR01-00001	SC	215 Third Avenue	0	0	1,200	0	4	4,950	NA		Expired
St. John's Church Expansion	ADR01-00002	SC	103 State Street	0	0	0	0	74	58,800	Complete	11,600 s.f. addition	Completed
Ameritech Office Building	ADR01-00003	JR	98xx NE 116th Street	0	0	5,100	0	17	6,970	NA	Conceptual only	Withdrawn
Kirkland Central Condominiums mixed use	ADR01-00004	SC	75 State Street	110	9,168	0	0	176	41,534	Winter, 2006		Under construction
Extended Stay America	ADR02-00002	JR	355 Kirkland Avenue	0	0	0	104	108	71,874	NA		Withdrawn
Kirkland Hotel	ADR03-00002	AR	220 Kirkland Avenue	0	0	0	91	91	15,246	TBD		Under construction
Acropolis Addition/remodel	ADR03-00003	SC	500 Central Way	0	0	649	0	20	10,800	NA		Expired
Kirkland Boardwalk Retail	ADR03-00008	JR	355 Kirkland Avenue	0	66,800	0	0	252	71,874	NA	Conceptual only	Withdrawn

ATTACHMENT 1

Design Board Review Project Data

Project	File #	Planner	Location	# Residential Units	New Retail s.f.	New Office s.f.	# hotel rooms	# parking stalls	Parcel size (square feet)	Estimated completion	Notes	Status
Evergreen Hospital Bed Tower	ADR03-00010	JR	12040 NE 128th Street	0	0	238,070	0	484	836,352	2006-2007		Under construction
Evergreen Plaza Office	DRC04-00001	SC	11800 NE 128th Street	0	0	99,670	0	465	88,862	Complete		Completed
Evergreen Hospital Gateway and Transit Center	DRC04-00002	JR	12039 NE 128th Street	0	0	155,040	0	644	180,300	2007 (Phase I)		Approved
Kirkland Park Condominiums mixed use	DRC04-00003	SC	355 Kirkland Avenue	119	8,839	0	0	179	71,874	Fall, 2006		Under construction
Almond Condominiums	DRC04-00004	JR	11246 124th Avenue NE	36	0	0	0	78	64,904	2006-2007		Grading permit
Chaffee Condominiums	DRC05-00001	SC	206 Lake Street South	Tbd	tbd	Tbd	0	Tbd	5,336	TBD		DR Pending
State Street Condominiums	DRC05-00002	TL	196 State Street	125	0	0	0	167	67,082	2007		DR Approval
Slater Avenue Apartments	DRC05-00003	SC	11680 Slater Avenue NE	6	0	0	0	12	13,068	TBD		DR Approval
Juanita Cottages	DRC05-00004	JR	98xx NE 116th Street	4	0	0	0	9	6,534	2006-2007		DR Approval
Totem Lake Mall Master Plan	DRC05-00005	JR	12636 Totem Lake Boulevard	216	562,300	144,000	0	3,093	1,105,000	Subject to development agreement	Project data is conceptual	DR Approval

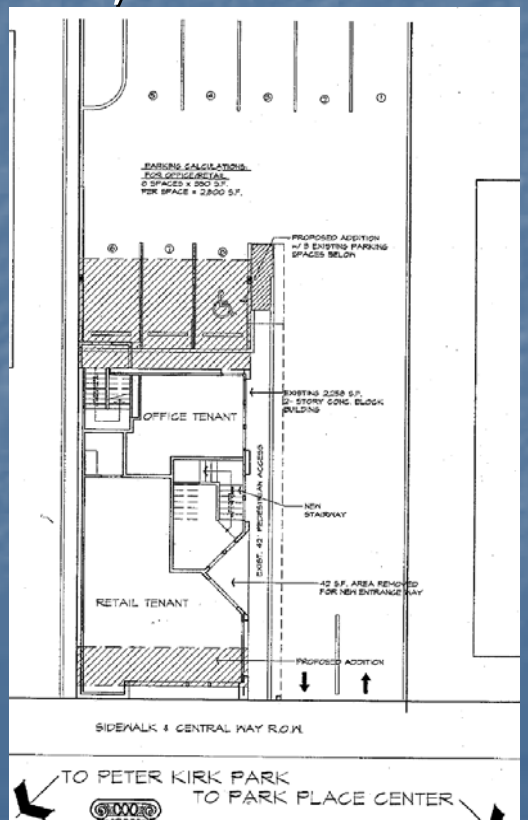
DRB PROJECTS

Projects Reviewed

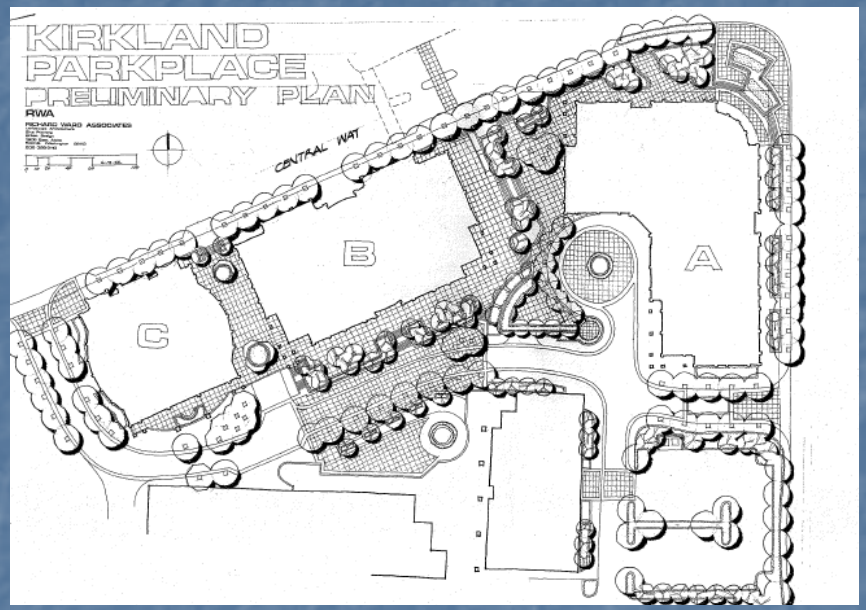
2000-2005

Central Printing

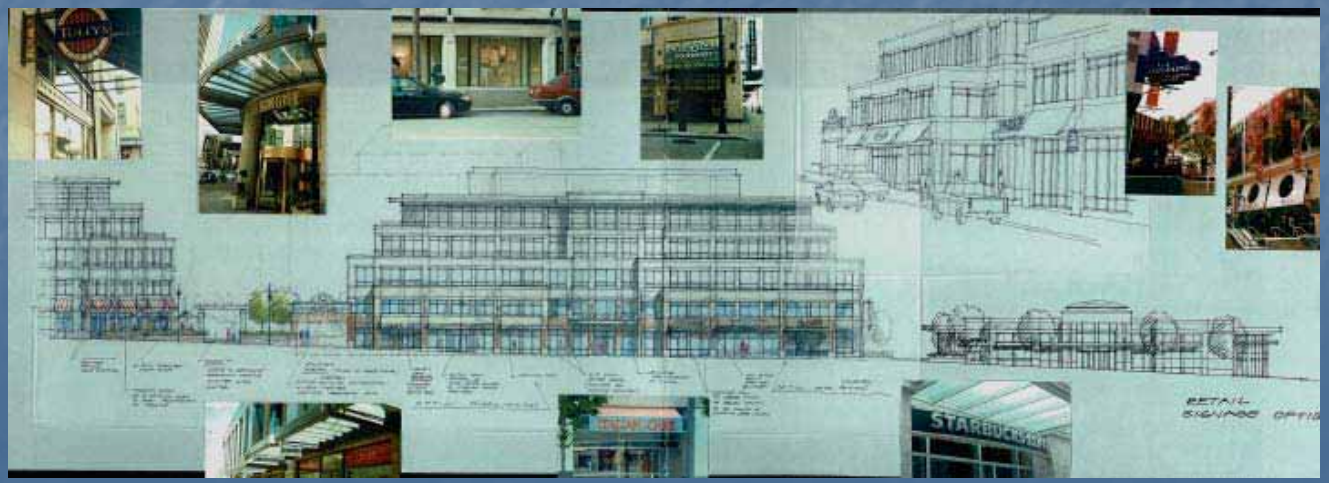
- 424 Central Way
- Status - expired
- 1 dwelling unit
- 1,200 sf retail
- 1,600 sf office



Parkplace

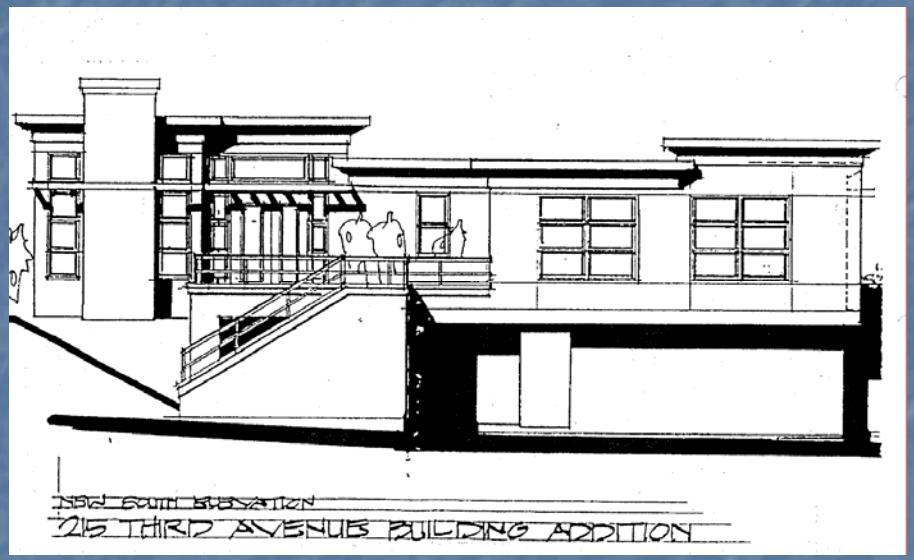


- 457 Central Way
- Status - expired
- 50 du
- 73,175 sf retail
- 202,300 sf office

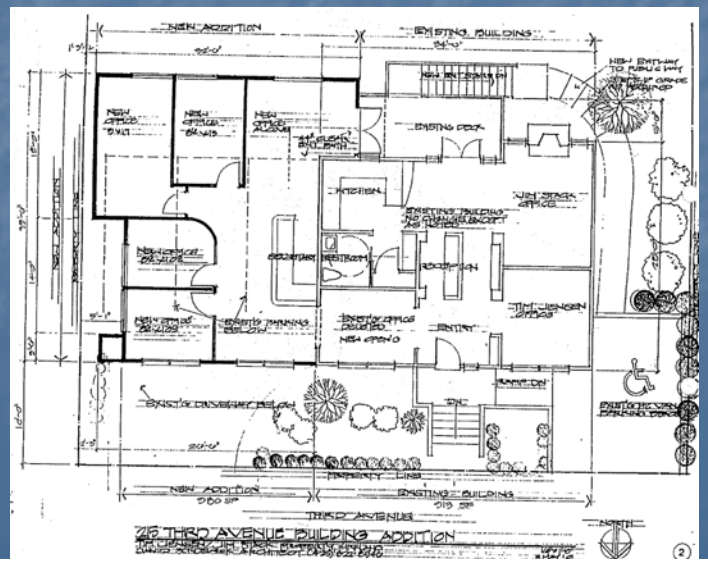


Partial elevation from Central Way

HNW Marketing



- 215 Third Ave.
- Status - expired
- 1,200 sf office addition



St. John's Church

East entry court

SW entry and daycare area

- 103 State Street
- Status - completed
- 11,600 sf addition

Kirkland Central Condos

Public plaza

- 75 State Street
- Status – under construction
- 110 du
- 9,168 sf retail

Extended Stay America

- 355 Kirkland Avenue
- Status - expired
- 104 room hotel

View from KPC

Kirkland Hotel

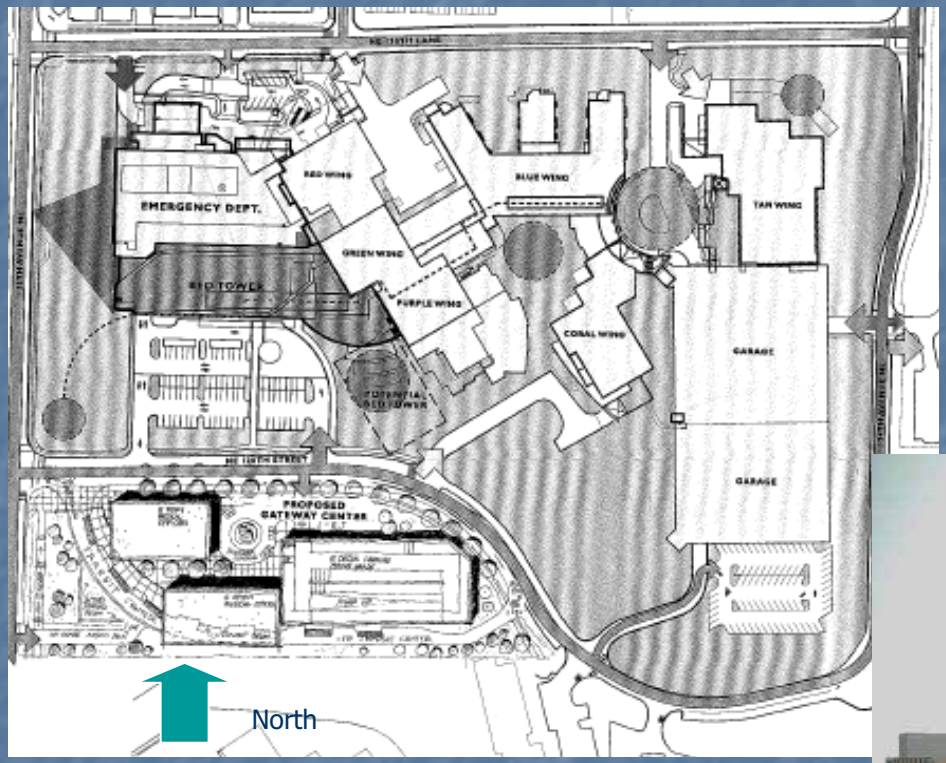
View from southeast

- 220 Kirkland Avenue
- Status – under construction
- 91 room hotel

Acropolis Addition/Remodel

- 500 Central Way
- Status - expired
- 649 sf office addition
- Remodel to structure

Evergreen Hospital Bed Tower



- 12040 NE 128th Street
- Status – under construction
- 238,070 sf addition
- 484 parking stalls

View from southwest

Evergreen Hospital Gateway and Transit Center

View from northwest

- 12039 NE 128th Street
- Status - approved
- 155,040 sf medical office
- 644 parking stalls
- Totem Lake Transit Center

View from southwest

Evergreen Plaza Office

Southeast entry

- 11800 NE 128th Street
- Status - completed
- 99,670 sf medical office
- 465 parking stalls

Kirkland Park Condos

- 355 Kirkland Avenue
  - (former ESA site)
- Status – under construction
- 119 condominiums
- 8,839 sf retail
- 179 parking stalls

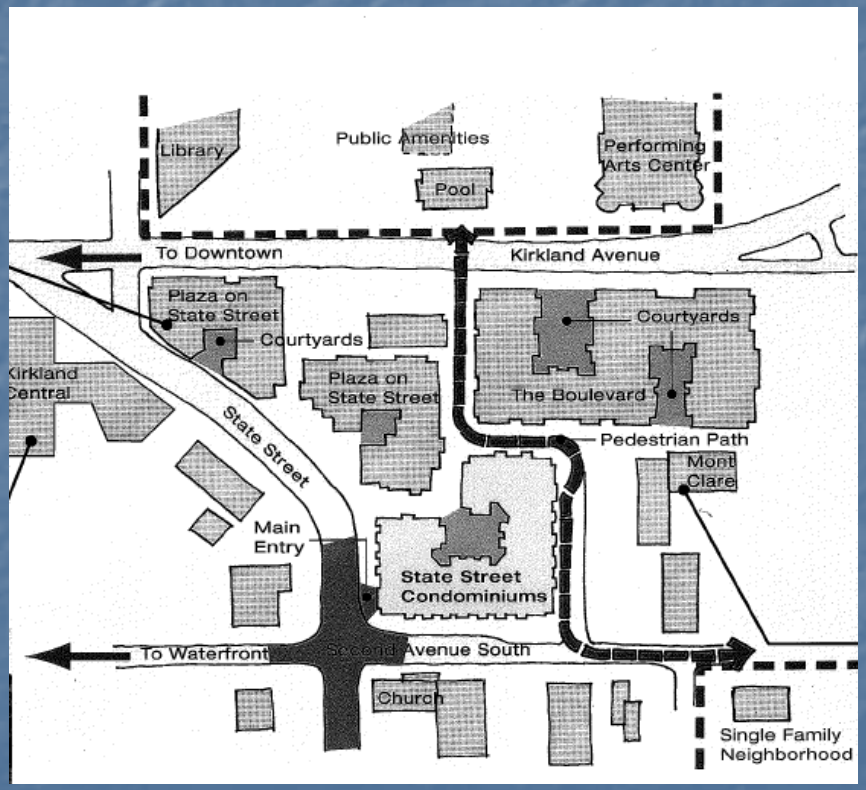
North elevation - facing KPC

Almond Condos

- 11246 124th Avenue NE
- Status – grading permit
- 36 condominiums
- 78 parking stalls (surface and carports

View from 124th

State Street Condos



Neighborhood context

State Street Entry

- 196 State Street
- Status – building permit review
- 125 condominiums
- 167 parking stalls

Slater Avenue Apartments

- 11680 Slater Ave. NE
- Status - approved
- 6 apartment units
- 12 parking stalls

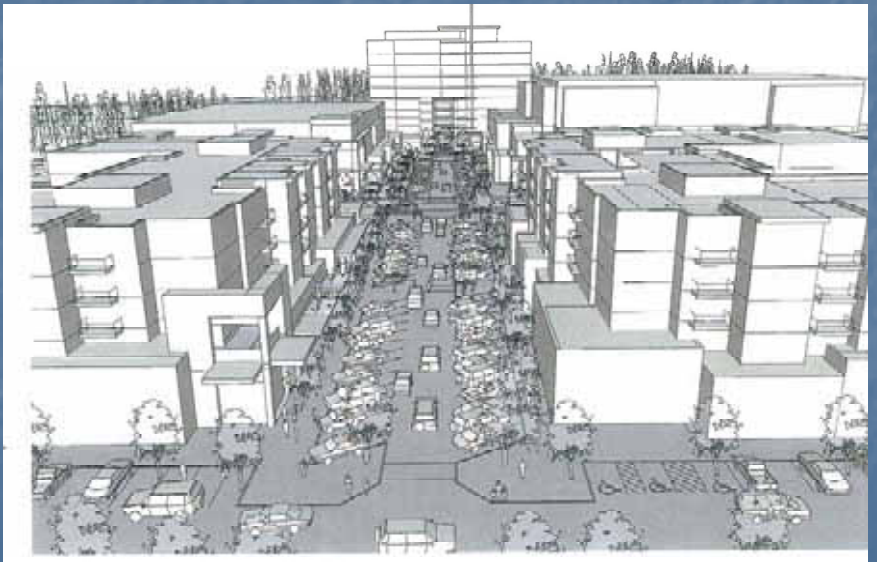
Juanita Cottages

View from 98th Ave. NE

- 9832 NE 116th Street
- Status – building permit review
- 4 condominiums
- 9 parking stalls

Totem Lake Mall Master Plan

- 12636 Totem lake Boulevard
- Status - approved
- 216 du
- 562,300 sf retail
- 144,000 sf office
- 3,093 parking stalls



Boulevard from West

CITY OF KIRKLAND
City Manager's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3001
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Tracy Burrows, Senior Management Analyst

Date: January 6, 2006

Subject: 2006 Legislative Session Status Report

The 2006 Legislative Session convenes on Monday, January 9th. At each Council meeting during the legislative session, the City Council will receive an update on the legislative issues that are included in the City's legislative agenda and on emerging issues that are of particular concern to local government. The City Council will have the opportunity to provide direction to staff on pending bills at these meetings. During the period between Council meetings, the City Council's legislative committee will provide direction to staff on issues that are time sensitive and need immediate City action.

Below is a brief summary of the pre-session status of the City's major issues:

Annexation: *Kirkland supports legislation that provides local governments with a set of annexation tools that help achieve the goal of having cities be the urban service providers within urban growth areas.*

Kirkland has been working with a coalition of cities to develop options for annexation funding. Three major options for annexation transition funding have emerged: (1) state funding of annexation transition costs through a credit to local governments on a portion of the state sales tax; (2) local funding of annexation transition costs through the ability to continue to levy the county road tax for a period of time after annexation; and, (3) local property tax-based funding of annexation transition costs through the creation of a separate annexation district. The City's lobbyist is working with Legislative leaders to line up sponsors for each of these options.

Municipal Courts: *Kirkland supports cities' ability to form municipal courts and is working to preserve all options for providing municipal court services in the future.*

During the off-session, the Association of Washington Cities (AWC) developed a bill that would confirm cities' authority to enter into contracts with nearby cities to provide municipal court services. The Administrative Office of the Courts (AOC), representing the judges, developed an alternative bill that included many provisions that were unacceptable to the cities, including requirements for the election of all judges and undesirable requirements and limitations on contracting arrangements. Attempts to reach a negotiated compromise position have stalled. Mike Ryherd, the City's lobbyist, is working with AWC to reach out to the leadership of the Judiciary Committees in hopes that they will go forward with a limited bill that would confirm cities' authority to contract for municipal court services.

Streamlined Sales Tax : *Kirkland supports the objectives of the Streamlined Sales Tax project, including the application of sales tax to internet and catalogue sales. Kirkland supports the seven principles for SST*

implementation that have been agreed upon by the Association of Washington Cities (AWC) SST Committee, including the goal of full mitigation for the sales tax revenue losses of negatively impacted cities.

While the cities have finally reached an agreement on SST, this will be a difficult year for this issue to go forward. The State is currently prepared to propose partial, but not full mitigation for cities that will lose revenue under the new sourcing rules. In addition, any tax-related issue will face challenges during this election year.

Incentives for Affordable Housing : *Kirkland supports incentives for affordable housing, including property tax exemptions to new or rehabilitated multi-family housing.*

Kirkland has worked with A Coalition for Regional Housing (ARCH) to draft a bill that would expand cities' ability to grant property tax exemptions for new or rehabilitated multifamily housing, and in particular would allow for partial exemptions for rental and mixed use housing. Rep. Judy Clibborn has agreed to sponsor the bill this year and our lobbyist is working to garner additional sponsors.

KIRKLAND CITY COUNCIL REGULAR MEETING MINUTES
January 03, 2006

1. CALL TO ORDER

3. STUDY SESSION

a. Totem Lake Code and Map Amendments
Joining Council for the Study Session were City Manager Dave Ramsay; Paul Stewart, Deputy Director of Planning and Community Development; Dorian Collins, Senior Planner; and Planning Commission members Carolyn Hayek, Chair, and Matt Gregory.

4. OATH OF OFFICE

a. Councilmember Mary-Alyce Burleigh

b. Councilmember Jim Lauinger

c. Councilmember Joan McBride

2. ROLL CALL
Present: Councilmember Dave Asher; Councilmember Mary-Alyce Burleigh; Councilmember Jessica Greenway; Councilmember Tom Hodgson; Councilmember Jim Lauinger; Councilmember Joan McBride; Councilmember Bob Sternoff

5. ELECTION OF MAYOR AND DEPUTY MAYOR
Motion to Approve the election of Councilmember Jim Lauinger as Mayor.
Moved by Councilmember Dave Asher, seconded by Councilmember Jessica Greenway.
Vote: Motion carried 7-0.
Yes: Councilmember Dave Asher; Councilmember Mary-Alyce Burleigh; Councilmember Jessica Greenway; Councilmember Tom Hodgson; Councilmember Jim Lauinger; Councilmember Joan McBride; Councilmember Bob Sternoff
Motion to Approve the election of Councilmember Joan McBride as Deputy Mayor.
Moved by Councilmember Jim Lauinger, seconded by Councilmember Jessica Greenway.
Vote: Motion carried 7-0.
Yes: Councilmember Dave Asher; Councilmember Mary-Alyce Burleigh; Councilmember Jessica Greenway; Councilmember Tom Hodgson; Councilmember Jim Lauinger; Councilmember Joan McBride; Councilmember Bob Sternoff

6. EXECUTIVE SESSION

7. SPECIAL PRESENTATIONS

a. Community Emergency Response Team (CERT) Graduates Recognition

Chief Blake presented an overview of the CERT program and introduced training staff and members of the inaugural class of CERT graduates.

8. REPORTS

a. City Council

(1) Regional Issues

Council shared information regarding the Suburban Cities Association Annual Meeting; Joint Council meeting with State Legislators; Appreciation for Past Mayor Burleigh's service; Kirkland "De-Decorating" work party invitation for January 7th; Eastside Transportation Partnership meeting; Suburban Cities Regional Representation; Nomination of Councilmember Mary-Alyce Burleigh to the Sound Transit Board; Lodging Tax Advisory Committee; and Youth in Government Day.

b. City Manager

(1) 2006 City Council Retreat Topics

(2) Calendar Update

9. COMMUNICATIONS

a. Items from the Audience

Robert Miller, 4546 Lake Washington Blvd., Kirkland, WA
Lori Christopher Hislop, 13027 NE 85th Street, Kirkland, WA
Carter Bagg, 12819 NE 84th Street, Kirkland, WA
Linda Jones, 8725 126th Avenue NE, Kirkland, WA

b. Petitions

10. CONSENT CALENDAR

a. Approval of Minutes:

(1) December 13, 2005

(2) December 15, 2005

b. Audit of Accounts:
Payroll $ 1,543,340.12
Bills $ 2,717,008.25

run # 567 check # 474232
run # 568 check # 474233
run # 569 check #'s 474234 - 474439
run # 570 check #'s 474440 - 474462
run # 571 check # 474489
run # 572 check #'s 474490 - 474762
run # 573 check #'s 474765 - 474813

c. General Correspondence

d. Claims

(1) Victor Corrin and Paige Paul

(2) Gregg E. Prokop

e. Authorization to Call for Bids

f. Award of Bids

g. Acceptance of Public Improvements and Establishing Lien Period

h. Approval of Agreements

i. Other Items of Business

(1) Ordinance No. 4032, entitled "AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SEWER MAIN EXTENSIONS, AND AMENDING SECTIONS 15.38.010 AND 15.38.030(D) OF THE KIRKLAND MUNICIPAL CODE."
This item was moved to 12.c. under Unfinished Business.

(2) Resolution R-4542, entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND DESIGNATING THE KING COUNTY JOURNAL AS THE OFFICIAL NEWSPAPER FOR THE CITY OF KIRKLAND FOR THE YEAR 2006 FOR THE PUBLICATION AS REQUIRED BY LAW OF ORDINANCES AND OFFICIAL NOTICES."

Motion to Approve the consent calendar with the exception of item 10.i. (1).
Moved by Councilmember Mary-Alyce Burleigh, seconded by Councilmember Jessica Greenway.
Vote: Motion carried 7-0.
Yes: Councilmember Dave Asher; Councilmember Mary-Alyce Burleigh; Councilmember Jessica Greenway; Councilmember Tom Hodgson; Councilmember Jim Lauinger; Councilmember Joan McBride; Councilmember Bob Sternoff

11. PUBLIC HEARINGS

a. Resolution R-4543, Expressing an Intent to Vacate a Portion of a Right-of-Way on 118th Avenue NE

Mayor Lauinger opened the public hearing. Stacy Clauson, Department of Planning and Community Development, provided an overview of the issues and presented additional and revised information.

Also providing testimony were:

Tod Johnson, 11845 NE 85th Street, Kirkland, WA

Dan Hardin, 226 6th Avenue, Kirkland, WA

Curtis Brown 8035 118th Avenue, Kirkland, WA

Jim McElwee, 12907 NE 78th Place, Kirkland, WA

No further testimony was offered.

Motion to Approve the continuation of the public hearing to February 7, 2006.

Moved by Councilmember Dave Asher, seconded by Councilmember Mary-Alyce Burleigh.

Vote: Motion carried 7-0.

Yes: Councilmember Dave Asher; Councilmember Mary-Alyce Burleigh; Councilmember Jessica Greenway; Councilmember Tom Hodgson; Councilmember Jim Lauinger; Councilmember Joan McBride; Councilmember Bob Sternoff

b. Totem Lake Mall Development Agreement

Mayor Lauinger reopened the continued public hearing. Following an introduction by City Manager Dave Ramsay, comments were provided by Charles Worsham of DDR Coventry. Planning and Community Development Director Eric Shields then provided an overview of the agreement discussions and status.

Testimony was provided by:

Bea Nahon, 129 Third Avenue, Kirkland, WA

No further testimony was offered.

Motion to Approve the continuation of the public hearing to January 17, 2006.

Moved by Councilmember Dave Asher, seconded by Councilmember Jessica Greenway.

Vote: Motion carried 7-0.

Yes: Councilmember Dave Asher; Councilmember Mary-Alyce Burleigh; Councilmember Jessica Greenway; Councilmember Tom Hodgson; Councilmember Jim Lauinger; Councilmember Joan McBride; Councilmember Bob Sternoff

12. UNFINISHED BUSINESS

a. Transportation Commission Recommendation for Approving Speed Limit Policy

Transportation Commission member Norm Storme provided an overview of the proposed policy and process. Council requested that the Commission bring back an amended policy to a future Council

meeting with the addition of a policy principle that further consideration be given to making operational or physical changes when there is a need to reduce operating speeds.

b. Final Adoption of NE 85th Street Subarea Code Amendments:

(1) Ordinance No. 4030 and its Summary, Amending the Kirkland Zoning Code and Zoning Map

Motion to Approve Ordinance No. 4030 and its Summary, entitled "AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING, PLANNING, AND LAND USE AND AMENDING CHAPTERS 1, 5, 10, 20, 25, 35, 48, 53, 60, 72, 92, 95, 105, 110, 115, 142, AND 162 OF ORDINANCE 3719 AS AMENDED, THE KIRKLAND ZONING ORDINANCE (TITLE 23 OF THE KIRKLAND MUNICIPAL CODE), AND KIRKLAND ZONING MAP, FILE NO. IV-02-05." as amended by the elimination of the added language in 92.35 regarding building material detail, subsections 4,6,7.
Moved by Councilmember Joan McBride, seconded by Councilmember Mary-Alyce Burleigh.
Vote: Motion carried 7-0.
Yes: Councilmember Dave Asher; Councilmember Mary-Alyce Burleigh; Councilmember Jessica Greenway; Councilmember Tom Hodgson; Councilmember Jim Lauinger; Councilmember Joan McBride; Councilmember Bob Sternoff

(2) Ordinance No. 4031, Amending the Kirkland Municipal Code

Motion to Approve Ordinance No. 4031, entitled "AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO DESIGN REVIEW GUIDELINES FOR THE ROSE HILL BUSINESS DISTRICT AND AMENDING SECTION 3.30.040 OF THE KIRKLAND MUNICIPAL CODE, FILE NO. IV-02-05."
Moved by Councilmember Joan McBride, seconded by Councilmember Mary-Alyce Burleigh.
Vote: Motion carried 7-0.
Yes: Councilmember Dave Asher; Councilmember Mary-Alyce Burleigh; Councilmember Jessica Greenway; Councilmember Tom Hodgson; Councilmember Jim Lauinger; Councilmember Joan McBride; Councilmember Bob Sternoff

c. Ordinance 4032, Relating to Sewer Main Extensions and Amending Sections of the Kirkland Municipal Code

This item was moved from the consent calendar 10.i.(1).
Motion to Approve the continuance of consideration of Ordinance No. 4032 to the January 17, 2006 City Council meeting.
Moved by Councilmember Dave Asher, seconded by Councilmember Mary-Alyce Burleigh.
Vote: Motion carried 7-0.

Yes: Councilmember Dave Asher; Councilmember Mary-Alyce Burleigh; Councilmember Jessica Greenway; Councilmember Tom Hodgson; Councilmember Jim Lauinger; Councilmember Joan McBride; Councilmember Bob Sternoff

13. NEW BUSINESS

14. ANNOUNCEMENTS

15. ADJOURNMENT

The Kirkland City Council regular meeting of January 3, 2006 adjourned at 11:56 p.m.

City Clerk Mayor

CITY OF KIRKLAND
Department of Finance and Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Kathi Anderson, City Clerk

Date: January 11, 2006

Subject: CLAIM(S) FOR DAMAGES

RECOMMENDATION

It is recommended that the City Council acknowledge receipt of the following Claim(s) for Damages and refer each claim to the proper department (risk management section) for disposition.

POLICY IMPLICATIONS

This is consistent with City policy and procedure and is in accordance with the requirements of state law (RCW 35.31.(040).

BACKGROUND DISCUSSION

The City has received the following Claim(s) for Damages from:

(1) Paul Fernandes
1838 4th Street
Kirkland, WA 98033

Amount: Unknown

Nature of Claim: Claimant states damage to property resulted from a city water main burst.

(2) Jason Gragg
14227 128th Place NE
Kirkland, WA 98034

Amount: $500.00

Nature of Claim: Claimant states damage to vehicle resulted from running over a large pothole in the street.

(3) Daniel Stapleton
777 State Street
Kirkland, WA 98033

Amount: $1298.08

Nature of Claim: Claimant states damage to property resulted from improper sewage line hook-up.

CITY OF KIRKLAND
123 Fifth Avenue, Kirkland, WA 98033 425.587.3000
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Daryl Grigsby, Public Works Director
Ray Steiger, P.E., Capital Projects Manager

Date: January 5, 2006

Subject: NE 126th PLACE/128th LANE NE EROSION CONTROL PROJECT - ACCEPT WORK

RECOMMENDATION:

It is recommended that City Council accept the NE 126th Place/128th Lane NE Erosion Control Project, as constructed by Mosbrucker Excavating, Inc., of Snohomish, WA and establish the 45 day lien period.

BACKGROUND AND DISCUSSION:

The NE 126th Place/128th Lane NE Erosion Control Project addressed severe stream channel erosion resulting in past flooding, property damage and continual maintenance expenses. The completed project conveys storm water in a new pipe buried within the original stream channel alignment. The storm water now outlets at the bottom of the slope where the stream gradient is less severe (Attachment A.)

At their regular meeting on September 6, 2005, Council awarded the contract for this project to Mosbrucker Excavating Inc. in the amount of $245,072; the engineers estimate was $244,000. Construction began September 12th and the project was substantially complete December 9th. With an approved budget of $374.000, total project expense equals $357,215, of which $240,515 was paid to the contactor (Attachment B). Remaining funds will be returned to the surface water reserve fund.

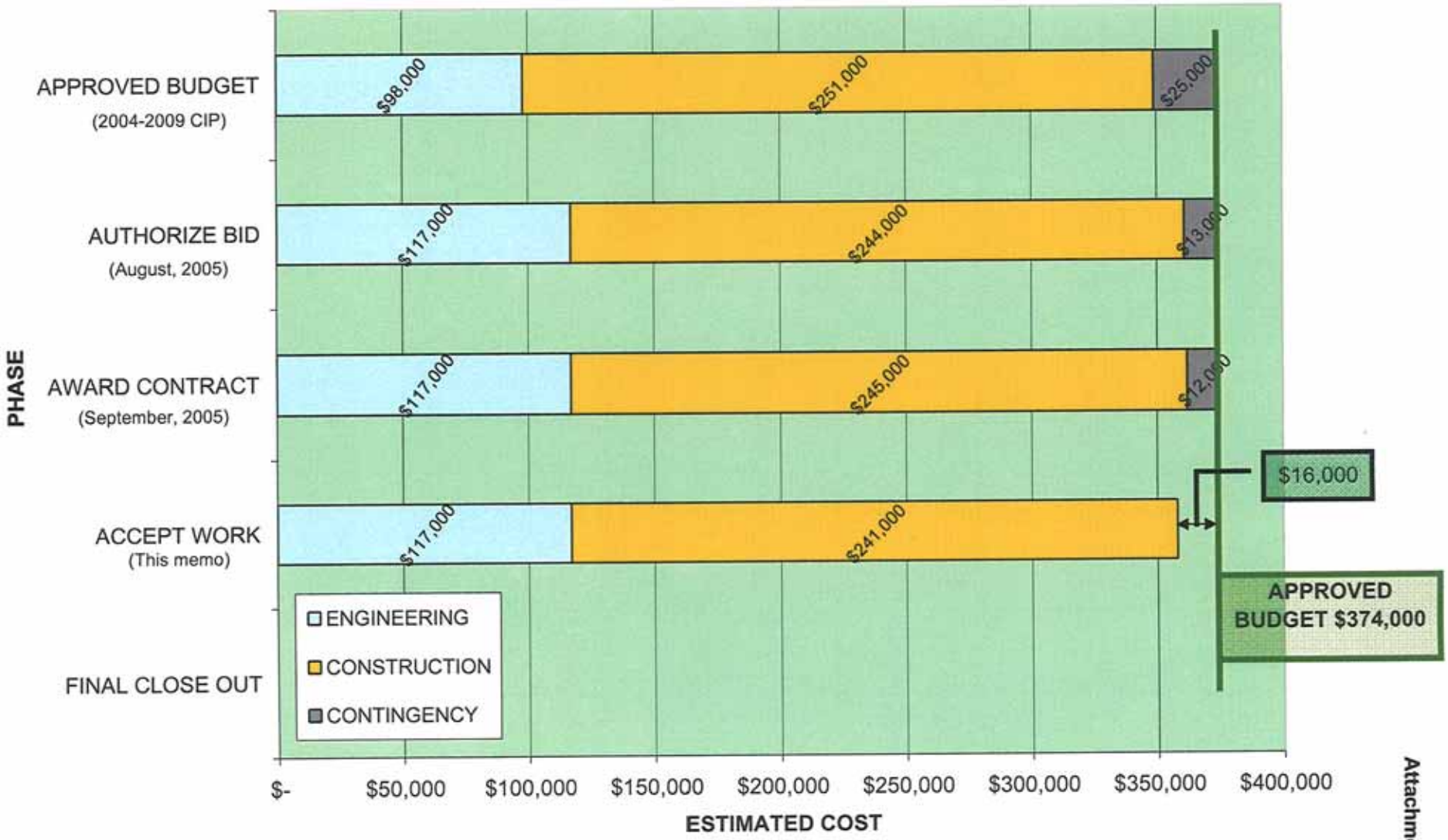
Attachment: (2)

ATTACHMENT A

NE 126TH PLACE/128TH LANE NE
EROSION CONTROL PROJECT
Project Vicinity Map

PROJECT BUDGET REPORT

NE 126th Place/128th Lane NE Erosion Control Project



Attachment B

CITY OF KIRKLAND
Department of Planning and Community Development
123 Fifth Avenue, Kirkland, WA 98033 425-587-3225
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Dawn Nelson, AICP, Planning Supervisor

Date: January 3, 2006

Subject: ARCH HOUSING TRUST FUND RECOMMENDATION FOR FALL 2005, File MIS06-00001

RECOMMENDATION

Staff recommends that the City Council adopt a motion to approve the recommendations and conditions of approval of the ARCH Executive Board for the Fall 2005 Housing Trust Fund to allocate $44,850 to the Low Income Housing Institute for the Kenmore Court project and $61,500 to St. Andrew's Housing Group for the Mine Hill project.

BACKGROUND DISCUSSION

As in previous funding rounds, general funds set aside by the Council for low and moderate income housing development projects are administered through the ARCH Housing Trust Fund application process. The ARCH Executive Board has recommended that $44,850, previously allocated from the Kirkland general fund to the ARCH Housing Trust Fund, be awarded to Low Income Housing Institute (LIHI) for the Kenmore Court project. They would use the funds to acquire land two blocks north of Kenmore's Town Center and construct 33 units of attached ownership housing for first time homebuyers with incomes at 80% of median income. The award would be made in the form of a secured grant.

The Executive Board has also recommended that $61,500, previously allocated from the Kirkland general fund to the ARCH Housing Trust Fund, be awarded to St. Andrew's Housing Group for the Mine Hill project. They would use the funds to acquire a 28 unit Section 8 apartment development near downtown Issaquah for preservation of affordable housing for families with incomes at or below 60% of median income. The award would be made in the form of a contingent loan.

A summary of the Executive Board recommendation is included as Attachment 1 to this memorandum. Additional information regarding the proposed projects can be provided at the January 17th City Council meeting, if desired.

Cc: Art Sullivan, ARCH, 16225 NE 87th Street, Suite A-3, Redmond, Washington 98052

TO: City of Bellevue Council Members
City of Redmond Council Members
City of Kirkland Council Members
City of Mercer Island Council Members
City of Kenmore Council Members
City of Newcastle Council Members
City of Issaquah Council Members
City of Woodinville Council Members
City of Clyde Hill Council Members
City of Medina Council Members

FROM: Ben Yazici, Chair and ARCH Executive Board

DATE: December 13, 2005

RE: Fall 2005 Housing Trust Fund (HTF) Recommendation

The ARCH Executive Board has completed its review of the three applications applicable to the spring funding round of the 2005 Housing Trust Fund. The recommendations total $750,000 which includes $532,350 of local funding from the cities of Bellevue (includes $80,000 of CDBG), Clyde Hill, Issaquah, Kenmore, Kirkland, Mercer Island, Medina, Newcastle, Redmond, and Woodinville, and $217,650 of CDBG funds from King County. The actual amount will depend on final action by the City Councils and King County (for CDBG funds).

Please find attached the following supporting materials:

- A summary of the funding rationale and recommended conditions.

Page Number

LIHI, Kenmore Court…..……...……. ……...2- 4
SAHG, Mine Hill…..……...……. ……..5- 7
SAHG, 280 Clark (Not Recommended)…..……...……. ……...8

- Economic Summaries of the projects……. ……9-11

- A table that summarizes the project and lists the recommended funding level and source (Page 12).

- A table that lists all the funding sources for the projects, and the amount leveraged by our local dollars (Page 13).

- A table that summarizes the projects funded through the Spring 2005 ARCH Housing Trust Fund round (Page 14).

1. Low Income Housing Institute (LIHI)-Kenmore Court

Funding Request: $ 350,000 (Secured Grant)

Ex. Board Recommendation: $ 350,000 (Secured Grant)

$217,650	King County CDBG
$ 75,000	City of Kenmore
$ 44,850	City of Kirkland
$ 12,500	City of Woodinville

Project Summary:

The Low Income Housing Institute proposes to acquire a 1.1 acre site located 2 blocks north of the City of Kenmore's Town Center shopping area, demolish the existing owner occupied single family residence, and construct 33 units of attached ownership housing, for first time homebuyer households with incomes at 80% of median income.

Unit mix will be 9 one bedroom units, 12 two bedroom units, 9 three bedroom units and 3 four bedroom units. The 3 four bedroom units will be arranged in a 3-story triplex configuration, with garages below the units. The 10 3 bedroom units will be arranged in a straight line, with one car garages beneath the units and one surface parking space each on their driveway aprons. The 21 one and two bedroom units will sit on top of an underground parking structure, which will house 23 parking spaces,. The central area of the site will contain a small open space, surrounded by a circle driveway turn-around for fire department vehicles.

The applicant intends to use a community land trust model to maintain affordability in the units. The applicant would retain ownership of the land and sell the improvements (units) to purchasers. All units affordable to households at 80% of median income

The applicant would partner with other agencies for pre-purchase counseling and homebuyer education.

Funding Rationale:

The Executive Board supported this application for the following reasons:

- The creation of affordable ownership units has been an undermet goal of the ARCH Housing Trust Fund
- Affordability is proposed for a longer than standard term (99 years instead of 50 years)
- All units would be affordable to households at 80% of median income
- A significant portion of the units are for larger households (3 and 4 bedroom units)
- The site is convenient to employment, shopping and transit
- The location would help to increase geographic distribution of housing funded through the Trust Fund.

Conditions:

1. General funds shall be used by Low Income Housing Institute ('Agency') to write down construction and closing costs. CDBG funds shall only be used for site improvements, site

preparation and permit costs. Funds may not be used for any other purpose unless City Staff has given written authorization for the alternate use.

2. In the event federal funds are used, and to the extent applicable, federal guidelines must be met. The Agency shall consult with King County Staff regarding use of any federal funds in the project.

3. Prior to the release of the funding commitment proposed for development of the property, the Agency shall submit documentation of the commitment of all proposed public and private funds needed to complete the project. In the event commitment of funds identified in the application cannot be secured in the time frame identified in the application, the Agency shall immediately notify City Staff, and describe the actions it will undertake to secure alternative funding and the timing of those actions subject to City Staff's review and approval.

4. The funding commitment shall continue for eighteen (18) months from the date of Council approval and shall expire thereafter if all conditions are not satisfied, except, that if condition number 3 is not met by July 15, 2006, the City may withdraw its funding commitment. For all conditions, other than condition 3, an extension may be requested to City staff no later than sixty (60) days prior to the expiration date. City staff will consider an extension only on the basis of documented, meaningful progress in bringing the project to readiness or completion.

5. Funds will be in the form of a secured grant, with no repayment, so long as affordability and target population is maintained.

6. If there is any project cash flow after payment of housing expenses, it shall remain as revenue to the Homeowners Association, and shall be retained as reserves for the Homeowner Association budget.

7. A covenant is recorded ensuring affordability for at least 99 years, with affordability as shown in the following table, unless otherwise approved by City Staff.

Median Income Level	1	2	3	3	Total
Moderate Income 80%	9	12	9	3	33
Total	9	12	9	3	33

8. Prior to release of funds, the Agency shall submit evidence of site control.

9. Prior to release of funds, the Agency shall provide a revised project implementation timeline, development budget and operating budget based upon more complete cost estimates and actual funding commitments, which must be approved by City Staff. If the Agency is unable to adhere to the timeline and/or budgets, City Staff must be immediately notified and a new timeline and/or budgets shall be submitted by the Agency for the City Staff’s approval. The City shall not unreasonably withhold its approval to a revised timeline and/or budgets, so long as such new timeline and/or budgets does not materially adversely change the Project. This shall be a

continuing obligation of the Agency. Failure to adhere to the timeline and budgets, either original or as amended, may result in withdrawal of the City's commitment of funds.

10. Prior to release of funds, submit a final marketing strategy, setting forth the Agency's final marketing plan that emphasizes identifying homebuyers from East King County. The strategy must be approved by City Staff.

11. Prior to release of funds, submit copies of the final community land trust documents and resale covenants, that will result in the long term affordability of the units, for City Staff approval. Approval will be based on the ability of the documents to ensure long term affordability and as applicable to ensure other conditions of funding will be adhered to.

12. Maintain documentation of all necessary licenses, land use approvals and permits.

13. Submit monitoring reports quarterly through completion of the project, and annually thereafter. Submit a final budget upon project completion. If applicable, submit initial tenant information as required by the City or County.

2. St. Andrew's Housing Group-Mine Hill

Funding Request: $ 450,000 (Contingent Loan)

Ex. Board Recommendation: $ 450,000 (Contingent Loan)

$ 85,000	City of Issaquah (incl a portion of 2006 funds)
$210,000	City of Bellevue (incl. $80,000 of CDBG)
$ 10,000	City of Clyde Hill
$ 61,500	City of Kirkland
$ 10,000	City of Medina
$ 10,000	City of Mercer Island
$ 23,500	City of Newcastle
$ 40,000	City of Redmond

Project Summary

Mine Hill is a Project Based Section 8 Preservation project for families located near downtown Issaquah. It consists of 6 (one story and two story stacked flats and townhouse units), wood-framed residential buildings arranged in a rectangle pattern on a 2.07 acre site. The property was built in 1978. The property has an interior courtyard, which contains a laundry building. The property has surface parking

Unit mix consists of eight 1-bedroom units (650 sq. ft), twelve 2-bedroom units (790 sq. ft), and eight 3-bedroom units (1270 sq. ft).

The proposal will have three affordability levels:

30%--14 (one, two, and three bedroom) units.
50%-- 9 (one, two, and three bedroom) units.
60%-- 5 (three bedroom) units, one of which is a manager's unit.

All the units, except the manager's unit is currently a Section 8 unit, and will remain. It is planned that 6 of the units will be set aside for the disabled.

The project also includes the acquisition and other costs related to the duplex property adjacent to the site.

Funding Rationale:

The Executive Board supported this application for the following reasons:

- The project is a Section 8 preservation project, which is a high priority for ARCH.
- Housing is for primarily very low and low income tenants.
- Includes 6 units set-aside for the disabled.
- Strong leverage of other public funding.
- Location convenient to downtown Issaquah and to public transit.

Conditions:

1. Funds shall be used by Saint Andrew's Housing Group ('Agency') towards construction, or the developer fee. Funds may not be used for any other purpose unless City Staff have given written authorization for the alternate use.

2. Prior to the release of the funding commitment proposed for development of the property, the Agency shall submit documentation of the commitment of all proposed public and private funds needed to complete the project, including Section 8. In the event commitment of funds identified in the application cannot be secured in the time frame identified in the application, the Agency shall immediately notify City Staff, and describe the actions it will undertake to secure alternative funding and the timing of those actions subject to City Staff's review and approval.

3. The funding commitment shall continue for eighteen (18) months from the date of Council approval and shall expire thereafter if all conditions are not satisfied. An extension may be requested to City staff no later than sixty (60) days prior to the expiration date. City staff will consider an extension only on the basis of documented, meaningful progress in bringing the project to readiness or completion. The amount of this commitment includes anticipated development expenses for the duplex unit in the project. If the duplex improvements do not occur, or are transferred to the 280 Clark project, then based on consultation with other public funders, City Staff may proportionally reduce the funding commitment level.

4. Funds will be in the form of a contingent loan. Loan terms will account for various factors, including loan terms from other fund sources, Section 8 rent levels, and available cash flow. Final loan terms shall be determined prior to release of funds and must be approved by City Staff. Based on the preliminary development budget, it is anticipated that loan payments will be based on a set repayment schedule, and begin at some predetermined point after repayment of the deferred developer fee. The terms will also include a provision for the Applicant to request a deferment of a payment if certain conditions are met (e.g. low cash flow due to unexpected costs or reduction/loss of Section 8). Any requested deferment of loan payment is subject to approval by City Staff, and any deferred payment would be repaid from future cash flow or at the end of the amortization period.

5. Until such time as the deferred developer fee is fully repaid, all cash flow after payment of operating expenses and debt service, shall be used to repay the deferred developer fee.

6. A covenant is recorded ensuring affordability for at least 50 years, If Section 8 is present within the project, income limits and affordability levels will be consistent with Section 8 Program guidelines. Otherwise, affordability shall be as shown in the following table, using tax credits program definitions for affordability.

Median Income Level	1	2	3	Total
Very Low Income 0-30%	6	7	1	14
Low Income 31-50%	2	5	2	9
Moderate Income 51-60%			5*	5
Total	8	15	5	28

* One of these units shall be a resident manager's unit.

7. The project will maintain Section 8 so long as it is available and economically feasible to do so. If, at any time, the viability of the project is threatened, due to reduction/loss of Section 8, low cash flow due to unplanned costs, or other reason, the City and the Agency shall work together to determine if the affordability requirements need to be adjusted for some or all of the units, not to exceed 60% of median income, in order to generate sufficient revenue to meet the Project's housing expenses (including reserves, debt service and asset management fee.)

8. Prior to release of funds, the Agency shall submit evidence of site control.

9. Prior to release of funds, the Agency shall provide a revised project implementation timeline, development budget and operating budget based upon more complete cost estimates and actual funding commitments, which must be approved by City Staff. If the Agency is unable to adhere to the timeline and/or budgets, City Staff must be immediately notified and a new timeline and/or budgets shall be submitted by the Agency for the City Staff's approval. The City shall not unreasonably withhold its approval to a revised timeline and/or budgets, so long as such new timeline and/or budgets does not materially adversely change the Project. This shall be a continuing obligation of the Agency. Failure to adhere to the timeline and budgets, either original or as amended, may result in withdrawal of the City's commitment of funds.

10. Prior to release of funds, submit a property management plan which will address: tenant selection procedures, management procedures to address tenant needs, services provided for or required of tenants, methods used to ensure that units set aside for people with a disability get leased to people with a disability (for example, referral agreements with local agencies that assist the disabled with housing needs), a short and long term strategy for covering operating expenses, and a strategy for informing very low and low income households about services and information that will assist them and help to stabilize their occupancy, such as through the use of a community room bulletin board, kiosk or other technique(s). It shall also include a summary of ARCH's affordability requirements, a strategy for the use of the ARCH mailing list in the leasing of the units, as well as to include the ARCH annual monitoring procedure requirements. The management plan must be approved by City Staff.

11. In the event federal funds are used, and to the extent applicable, federal guidelines must be met, including but not limited to: contractor solicitation, bidding and selection; wage rates; property acquisition; and Endangered Species Act (ESA) requirements.

12. Maintain documentation of all necessary licenses, land use approvals and permits.

13. Submit monitoring reports quarterly through completion of the project, and annually thereafter. Submit a final budget upon project completion. If applicable, submit initial tenant information as required by the City or County.

3. St. Andrew's Housing Group-280 Clark

Funding Request: $250,000 (Contingent Loan)

Ex. Board Recommendation: $0.

Project Summary

The 280 Clark project is a 30-unit permanent housing project on a 1.83 acre site, located on the southern edge of the older downtown area of the City of Issaquah. As part of this purchase, the project also contains an adjacent parcel, approximately a half acre in size, which is currently developed with a duplex. The acquisition and other costs for the duplex are part of the Mine Hill application and not included in this application.

280 Clark consists of 5 (two story garden style units), wood-framed residential buildings. The property was built between 1984-1986. Access to second story units is by exterior stairways. There are no elevators. The property has surface parking, some of which is covered by timber carports

Unit mix consists of thirty 2-bedroom units (1 bath units are 981 sq. ft, and 1.75 bath units are 1026 sq. ft.).

The proposal will have two affordability levels:
50%-- 23 units.
60%-- 7 units.

Funding Rationale: Executive Board Recommendation

The Executive Board did not support this application, at this time, primarily because the Mine hill project is a higher priority for St. Andrews Housing Group in this funding round. In addition, there are some details that need to be further developed, and the project's timing allows it to be considered in a subsequent round.

ECONOMIC SUMMARY: **Kenmore Court**

1. Applicant/Description: LIHI/ New construction of 33 units of ownership housing for households at 80% of median income.

2. Project Location: 7018-1026 NE 182nd Street, Kenmore, Wa.

3. Financing Information:

Funding Source	Funding Amount	Commitment
ARCH	$ 350,000	Applied for Fall 2005
King County	$ 950,000	Conditionally Committed
State	$ 500,000	Applied for Fall 2005
Federal Home Loan Bank	$ 330,000	Committed
LIHI Working Capital	$ 374,980	Proposed
Construction Loan	$ 5,910,020	Proposed
TOTAL	$ 8,415,000	

4. Development Budget:

ITEM	TOTAL	PER UNIT	HTF
Acquisition (includes permit ready design)	$ 958,000	$ 29,031	
Construction	$ 5,726,880	$173,542	Capital write down
Developer fee	$ 264,000	$ 8,000	To be determined
Project management	$ 132,000	$ 4,000	
Architect	$ 402,000	$ 12,182	
Other consultants	$ 119,000	$ 3,606	
Finance costs (construction interest)	$ 150,000	$ 4,546	
Other finance costs	$ 67,500	$ 2,046	
Sales commissions	$ 251,400	$ 7,618	
Condo Liability insurance	$ 195,000	$ 5,909	
Permits	$ 67,000	$ 2,030	
Marketing	$ 40,000	$ 1,212	
Other (inc. taxes and bidding costs)	$ 42,220	$ 1,279	
TOTAL	$ 8,415,000	$ 255,000	$ 350,000

5. Debt Service Coverage: No debt service proposed

6. Security for City Funds:

- A recorded covenant to ensure affordability and use for targeted population for at least 99 years.
- A promissory note secured by a deed of trust. The promissory note will require repayment of the entire grant amount upon non-compliance with any of the conditions of loan approval.

ECONOMIC SUMMARY: MINE HILL

1. Applicant/Description: SAHG/ Acquisition-rehab of 28 units of permanent rental housing for very low, low and moderate income individuals and families (includes 6 units set aside for disabled households and a managers unit).

2. Project Location: 245 SW Clark Street, Issaquah, Wa.

3. Financing Information:

Funding Source	Funding Amount	Commitment
ARCH	$ 450,000	$ 450,000 Applied for Fall 2005
King County	$ 1,000,000	$1,000,000 Applied for Fall 2005
State	$ 550,000	$ 550,000 Applied for Fall 2005
LIHTC	$ 2,208,047	Apply January 2006
Private Financing	$ 1,400,000	Commitment Fall 2005
Deferred Developer Fee	$ 182,756	Proposed
Cash Flow	$ 56,300	Proposed
TOTAL	$ 5,847,104	

4. Development Budget:

ITEM	TOTAL	PER UNIT	HTF
Acquisition	$ 2,921,064	$ 104,324	
Construction	$ 1,877,960	$ 67,070	$ 410,000
Design	$ 106,815	$ 3,815	
Developer Fee	$ 400,000	$ 14,286	$ 40,000
Other Consultants	$ 140,957	$ 5,034	
Finance Fees (includes Tax Credits)	$ 132,178	$ 4,720	
Reserves	$ 109,994	$ 3,928	
Relocation	$ 89,600	$ 3,200	
Insurance	$ 34,655	$ 1,238	
Other	$ 33.881	$ 1,210	
TOTAL	$ 5,847,104	$ 208,825	$ 450,000

5. Debt Service Coverage: 1.21 ratio on private loan. 1.00 ratio on all public and private debt service. City loans will provide for repayment over a set number of years at

fixed % interest and deferral if for certain reasons (e.g. such as loss of Section 8 assistance).

6. Security for City Funds:

- A recorded covenant to ensure affordability and use for targeted population for at least 50 years.
- A promissory note secured by a deed of trust. The promissory note will require repayment of the entire loan amount upon non-compliance with any of the conditions of loan approval.

ARCH HOUSING TRUST FUND (HTF) FUNDING RECOMMENDATIONS
FALL 2005

Applicant	Housing Type	# of units/ bdrms	Income served	Project Location	Duration of benefit	Total cost per unit	HTF cost per aff. unit	Funds Requested (Grant/Loan)	Funding Recommendation
St Andrew's Housing Group Mine Hill	28 units Family Rental (Acquisition/ Rehab)	28	14 @ 30% 9 @ 50% 4 @ 60% I mgr unit	245 SW Clark St. Issaquah	50 years	$208,825	$16,071	$450,000 (Loan)	$450,000 Contingent Loan $210,000 Bellevue (inc.$80,000 cdbg) $ 85,000 Issaquah gen funds $ 61,500 Kirkland gen funds $ 40,000 Redmond gen funds $ 23,500 Newcastle gen funds $ 10,000 Clyde Hill gen funds $ 10,000 Medina gen funds $ 10,000 Mercer Island gen funds
St Andrew's Housing Group 280 Clark	30 Family Rental (Acquisition/ Rehab) Duplex unit (undecided action)	30	23 at 50% 7 at 60%	280 SW Clark St. Issaquah	50 years	$137,626	$8,333	$250,000 (Loan)	-0-
Low Income Housing Institute Kenmore Court	33 Ownership (New Construction)	33	33 at 80%	7018-7026 NE 182nd Street Kenmore	99 Years	$255,000	$10,606	$350,000 (Secured Grant)	$350,000 Secured Grant $217,650 KC cdbg $ 75,000 Kenmore gen funds $ 44,850 Kirkland gen funds $ 12,500 Woodinville gen funds

NOTE: King County has already conditionally approved $950,000 for the project.

ARCH HOUSING TRUST FUND, FALL 2005

Leveraging Funds - - Based on Ex. Bd. Recommendation

	LIHI--Kenmore Court		SAHG--Mine Hill		TOTAL
ARCH	$350,000	4%	$450,000	8%	$800,000
Committed					
King County					
HOF/Challenge					
HOME					
CDBG					
HOPWA					
KC TOTAL	$950,000	11%	$1,000,000	17%	$1,950,000
WA HAP	$500,000	6%	$550,000	9%	$1,050,000
Federal/HUD					
Section 811					
McKinney					
FEDERAL TOTAL					
Tax Credits			$2,208,047	38%	$2,208,047
Federal Home Bank					
Bonds					
Bank Loans	$5,910,020	70%	$1,400,000	24%	$7,310,020
Private	$374,980	4%	$182,756	3%	$557,736
Other			$56,300	1%	$56,300
FHLB	$330,000				$330,000
TOTAL COST	$8,415,000	96%	$5,847,103	100%	$14,262,103

FIGURE 1
ARCH: EAST KING COUNTY TRUST FUND SUMMARY
LIST OF PROJECTS FUNDED (1993 - Spring 2005)

Project	Location	Owner	# Units/Beds	Funding	% of Total Allocation	Distribution Target
1. Family Housing						
Andrews Heights Apartments	Bellevue	St. Andrews	24	$400,000		
Garden Grove Apartments	Bellevue	DASH	18	$180,000		
Overlake Townhomes	Bellevue	Habitat of EKC	10	$120,000		
Glendale Apartments	Bellevue	DASH	82	$300,000		
Wildwood Apartments	Bellevue	DASH	36	$270,000		
Somerset Gardents (Kona)	Bellevue	KC Housing Authority	198	$700,000		
Pacific Inn	Bellevue *	Pacific Inn Assoc.	118	$600,000		
Eastwood Square	Bellevue	Park Villa LLC	48	$600,000		
Chalet Apts	Bellevue	St Andrews	14	$163,333		
YWCA Family Apartments	K.C. (Bellevue Sphere)	YWCA	12	$100,000		
Highland Gardens (Klahanie)	K.C. (Issaquah Sphere)	St. Andrews	54	$291,281		
Crestline Apartments	K.C. (Kirkland Sphere)	Shelter Resources	22	$195,000		
Parkway Apartments	Redmond	KC Housing Authority	41	$100,000		
Habitat - Patterson	Redmond	Habitat of EKC	24	$446,629		
Avon Villa Mobile Home Park	Redmond **	MHCP	93	$525,000		
Terrace Hills	Redmond	St. Andrews	18	$442,000		
Village at Overlake Station	Redmond	KC Housing Authority	308	$1,645,375		
Summerwood	Redmond	DASH	166	$1,198,034		
Habitat - Bothell Site	Bothell	Habitat of EKC	8	$170,000		
Habitat - Newcastle Site	Newcastle **	Habitat of EKC	12	$240,837		
Talus Property	Issaquah ***	St. Andrews	40	$1,002,770		
Issaquah Highlands Property	Issaquah ***	SAHG/SRI	40	$499,430		
Greenbrier Family Apts	Woodinville **	DASH	50	$286,892		
Plum Court	Kirkland	DASH	61 /66	$1,000,000		
ADU Loan Program	Various		6 est	$70,000		
Homeowner Downpayment Loan	Various	KC/WSHFC/ARCH	35 est	$215,000		
SUB-TOTAL			**1538**	**$11,761,582**	56.5% (56%)	
2. Senior Housing						
Cambridge Court	Bellevue	Resurrection Housing	20	$160,000		
Ashwood Court	Bellevue *	DASH/Shelter Resources	50	$1,070,000		
Evergreen Court (Assisted Living)	Bellevue	DASH/Shelter Resources	64 /84	$1,280,000		
Vasa Creek	K.C. (Bellevue Sphere)	Shelter Resources	50	$190,000		
Riverside Landing	Bothell **	Shelter Resources	50	$225,000		
Kirkland Plaza	Kirkland	St. Andrews	24	$610,000		
Heron Landing	Kenmore	DASH/Shelter Resources	50	$65,000		
Ellsworth House Apts	Mercer Island	St. Andrews	59	$900,000		
Greenbrier Sr Apts	Woodinville **	DASH/Shelter Resources	50	$131,192		
SUB-TOTAL			**417**	**$4,631,192**	22.2% (19%)	
3. Homeless/Transitional Housing						
Hopelink Place	Bellevue **	Hopelink	20	$500,000		
Chalet	Bellevue	St Andrews	4	$46,667		
Kensington Square	Bellevue	Housing at Crossroads	6	$150,000		
Dixie Price Transitional Housing	Redmond	Hopelink	4	$71,750		
Avondale Park	Redmond	Springboard (EHA)	18	$280,000		
Avondale Park Redevelopment	Redmond **	Springboard (EHA)	60	$1,502,469		
Petter Court	Kirkland	KITH	4	$100,000		
Talus Property	Issaquah ***	St. Andrews	10	$250,693		
Issaquah Highlands Property	Issaquah ***	SAHG/SRI	10	$140,000		
SUB-TOTAL			**118**	**$3,041,578**	14.6% (13%)	
4. Special Needs Housing						
My Friends Place	Uninc. KC	EDVP	6 Beds	$65,000		
Stillwater	Redmond	Eastside Mental Health	19 Beds	$187,787		
Foster Care Home	Kirkland	Friends of Youth	4 Beds	$35,000		
DD Group Home	Redmond/TBD	Community Living	5 Beds	$75,000		
United Cerebral Palsy	Bellevue/Redmond	UCP	9 Beds	$25,000		
DD Group Home	Bellevue	Residence East	5 Beds	$40,000		
AIDS Housing	Bellvue/Kirkland	Aids Housing of WA.	10 Units	$130,000		
Harrington House	Bellevue	AHA/CCS	8 Beds	$290,209		
DD Group Home	Bellevue	Community Living	5 Beds	$21,000		
Parkview DD Condos III	Bellevue	Parkview	4	$200,000		
IERR DD Home	Issaquah	IERR	6 Beds	$50,209		
Foster Care Home	Bothell	FOY	4 Beds	$50,000		
Oxford House	Bothell	Oxford/Compass Ctr.	8 Beds	$80,000		
Parkview DD Homes VI	Bellevue/Bothell	Parkview	6 Beds	$150,000		
SUB-TOTAL			**99 Beds/Units**	**$1,399,205**	6.7% (12%)	
TOTAL			**2172**	**$20,833,557**	**100.0%**	

* Funded through Bellevue Downtown Program
** Also, includes in-kind contributions (e.g. land, fee waivers, infrastructure improvements)
*** Amount of Fee Waiver still to be determined

CITY OF KIRKLAND
Department of Planning and Community Development
123 Fifth Avenue, Kirkland, WA 98033 425-587-3225
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Dawn Nelson, AICP, Planning Supervisor

Date: January 3, 2006

Subject: ARCH 2006 WORK PROGRAM AND BUDGET, File MIS06-00001

RECOMMENDATION

Staff recommends that the City Council, by motion, approve the 2006 ARCH Work Program and Budget.

BACKGROUND DISCUSSION

The ARCH Executive Board has reviewed and approved the 2006 Work Program and Budget. Pursuant to the ARCH Interlocal Agreement, these are being forwarded to the member Councils for their review and approval (see Attachments 1 and 2).

This year, ARCH will assist the City of Kirkland with follow up work related to the recommendations of the Housing Task Force. This will include ways to encourage affordable housing as part of market rate housing development, preparing permanent innovative housing regulations, preserving existing affordable housing and developing regulations for duplexes and triplexes that fit in single-family zones. A complete list of activities to be undertaken by ARCH in 2006 is contained in Attachment 1.

The proposed 2006 Budget for ARCH, which totals $417,983, is itemized in Attachment 2. A comparison with the 2005 Budget is provided. Resource distribution by the various ARCH member cities is also included. Kirkland's share increased from $48,024 to $50,425 – an increase of $2,401 in cash contributions. The percentage increase in contributions for the City of Kirkland is 5% and is consistent with increases requested of most member jurisdictions. The contribution of $50,425 for the ARCH Administrative Budget was approved as part of the City's budget for 2006.

Cc: Art Sullivan, ARCH, 16225 NE 87th Street, Suite A-3, Redmond, Washington 98052

Final 12/05

ARCH WORK PROGRAM: 2006

I. PROJECT ASSISTANCE

A. Oversight of Local Monetary Assistance

ARCH Trust Fund. Review applications and make recommendations for requests of local monetary funds through the ARCH Housing Trust Fund process. Includes helping to coordinate the application process and use of funds for various programs. Also assist with preparing contracts for awarded projects and do quarterly progress reports on funded projects.

Objective: Allocation of $1,000,000 or more through the ARCH Housing Trust Fund Process.

Funding commitments to create or preserve a minimum of 75 units.

For the 'Parity Program', provide updated annual information to members, and achieve the base line goal for levels of direct assistance.

Provide a variety of types of affordable housing as specified in the ARCH Trust Fund Criteria.

For projects requesting Bellevue funds, provide housing which is consistent with the priorities set by the Bellevue Council in 1998.

Evaluation of ARCH Trust Fund. Based on information collected during 2005, complete evaluation of Trust Fund in terms of maximizing local objectives, and if necessary, consider changes to the Trust Fund to respond to local conditions and address local needs.

Centralized Trust Fund Account. Initiate a centralized trust fund that will consolidate all affordable housing trust fund monies in a single account and allow loan repayments to revolve back into affordable housing.

Funded Projects Follow-up. Monitor progress of funded projects and assist local staff with contracting and distributing funds, and ongoing monitoring of loans.

King County / State Funding Programs Review and provide input to other funders for Eastside projects that apply for County (HOF, RAHP, HOME, etc) and State (Tax Credit, DCTED) funds. Includes providing input to the King County Home Consortium on behalf of participating Eastside jurisdictions. Participate in the 3-year evaluation of the RAHP program.

Objective: In consultation with County, local staff and housing providers, seek to have funds allocated on a countywide basis by the County and State allocated proportionately throughout the County including the ARCH Sphere of Influence.

B. Special Projects This includes a range of activities where ARCH staff assist local staff with specific projects. Activities can range from feasibility analysis, assisting with requests for

proposals, to preparation of legal documents (e.g. contracts, covenants). Following is a list of several specific projects that are already underway. One of ARCH's priorities for the coming year is to be available to assist cities as they assess other potential special projects that arise.

Surplus Property. Several members have expressed interest in doing a more detailed analysis of publicly owned properties that would include analysis of sites that are not formally surplus but may become surplus in the near future or are underutilized in their current use. One potential use of surplus property is for the HomeChoice Way NE ownership initiative.

Objective: Identify one or more specific sites on the eastside to be made available for housing.

Preserving HUD Financed Housing ARCH will continue to monitor changes affected by Congress, and, if needed, will work with local staff to assess potential ways to preserve existing affordable housing. ARCH will continue to actively pursue efforts to directly assist developments in order to preserve existing affordable housing.

Objective: Continue to explore potential roles and opportunities for local government to preserve affordability.

Solicit support from federal legislators to maintain funding for Section 8 and other HUD housing programs.

Metro Park n' Ride/Transit Sites. ARCH staff will continue to work with local staff on exploring the feasibility of pursuing housing projects on Park n' Ride or transit oriented lots. Sites in Woodinville, Redmond, and Kenmore are communities with specific sites that were being evaluated in 2005. As needed ARCH staff will assist City, County and transit staff with feasibility analysis, and if applicable, project development.

Objective: Complete feasibility work for the Kenmore, and have a development team and project proposal selected for one or both sites.

Assist Redmond with administering affordability requirements associated with the downtown Redmond Park n Ride site.

Issaquah Master Planned Development Sites. Both the Issaquah Highlands and Talus master planned developments (MPD) include 'land set-aside' that are reserved for the development of affordable housing for a specified period of time. ARCH will work with City staff to identify developers of the land 'set-aside' parcels and assist as needed with specific aspects of these parcels.

Objective: To assist as needed with privately developed portion of the affordable housing required in Talus, and begin work on a second set aside parcel in Issaquah Highlands.

Reserve Fund Innovative Program. In the past, ARCH has used its reserve funds to provide unsecured predevelopment loans for innovative projects being sponsored by communities (e.g. Greenbrier (Woodinville), Coast Guard Site). In addition to these projects, ARCH will work with

local staff and the broader community to identify other potential new innovative projects.

Objective: Identify a site for the ownership initiative and begin community design process.

Foreclosure Sales. ARCH staff will continue to attempt to monitor foreclosures in east King County. In the past, foreclosures have been infrequent in east King County. Given changes in lending practices the past few years, this could potentially become more of an issue for affordable ownership housing created through local land use regulations. Strategies to proactively respond to such foreclosure could be developed In 2006

Objective: In the event of known foreclosures, contact local jurisdiction and potentially interested developers, and to preserve existing affordable homes.

Develop a strategy to respond to foreclosures in affordable ownership units created through local regulatory efforts.

II. HOUSING POLICY PLANNING

A. Local Planning Activities

Community Forum/Discussions. Local housing providers are interested in holding conversations with local elected officials and community leaders to discuss local housing issues and potential local actions. These forum(s) would be scheduled by the housing providers, and ARCH staff would attend and assist city staff with following up on ideas generated from these forums. In addition to these forums, each member jurisdiction will schedule study session time to allow councils to discuss local housing issues and potential responses. For several cities this could coincide with adopting a housing strategy plan.

Objective: Provide opportunity for elected officials to remain updated on housing issues and provide direction for local housing efforts.

Legislative Items

a) State property tax exemption program Revisions to existing legislation (RCW 84.14) that allows a ten-year exemption for multifamily housing in mixed use areas could increase the effectiveness of this program in East King County cities. ARCH is exploring two changes: 1) to reduce the minimum city size that can use this program (currently 30,000); and 2) allow cities to offer partial exemptions. ARCH staff will work with local and State officials to propose legislative changes to RCW 84.14.

b) State Legislation related to regulatory strategies for affordable housing. Several bills were introduced last year related to density incentive programs for affordable housing, and accessory dwelling units. These bills, or other forms of these bills could significantly impact local communities. ARCH staff will track progress on this issue and report key developments to member cities.

c.) Federal Funding Support. (See Special Project, Preserving HUD Financed Housing

Housing Background Information. Historically, ARCH has provided a range of housing and demographic information for its members. On an annual basis, ARCH will continue to provide updated housing data information as available.

Objective:

Continue to keep member jurisdictions and the broader community aware of local housing conditions as input for jurisdictions to evaluate current and future efforts to meet local housing objectives.

ADU Community Outreach. Several years ago, ARCH took the initial steps to develop a marketing and technical assistance program for Accessory Dwelling Units (ADU). The goal for the upcoming year is to broaden the scope of the program by using information from the ADU demonstration project, and working with the County to develop a ADU loan program to increase ADU opportunities for lower income and/or disabled persons. In addition, as needed, ARCH staff will assist local staff with assessing and modifying existing local ADU regulations.

Objective Increase general community awareness of ADU's and provide basic information to help those interested in creating an ADU.

Eastside Homebuyer Assistance Program. In late 2005 the House Key Plus ARCH downpayment assistance program was launched with funding from many East King County cities, King County and the Washington Housing Commission. In 2006 the objective is to complete the first round of loans, assess the effectiveness of the program, and if shown to be effective, seek additional funding.

Objective Allocate all funds set-aside for the downpayment program and assess long term viability and potential modifications to the program.

If deemed successful, seek additional funding to extend the program.

Local Code Updates**:** ARCH jurisdictions are updating land use, zoning and other codes in order to implement policies identified in their Comprehensive Plans. ARCH staff will continue to assist local staffs in these efforts. Following are specifically identified areas that ARCH will assist local staff with accomplishing.

Objective: Assist local staff with completion of the following updates of local codes and specific plans:

Bellevue

Assist City staff as needed with Bellevue's planning initiatives that emerge from the update of the Housing Element. (e.g. updates to ADU regulations, more innovative forms of housing.)

Assist City staff with researching potential incentives to encourage work force housing in the Downtown.

Assist City staff to evaluate long term options for the Landmark property which

was purchased in 2002 by the King County Housing Authority. This may not occur until after 2006.

Bothell

Assist City staff with revising their Housing Element and with preparing a Housing Strategy Plan .

Assist City staff and Planning Commission with update to the Downtown Plan, specifically providing assistance on components related to housing and affordable housing. This will include ARCH staff participating in the Downtown Resources Group and the Housing/Affordable Housing Round Table.

Clyde Hill

Assist City staff with a general review of housing regulations.

Assist City with rental of City's affordable rental unit.

Issaquah

Assistance is anticipated for the following projects:

Talus: Assist in administering the first group of the Phase II affordable rental and owner units.

Issaquah Highlands: Monitor the implementation of the Issaquah Highlands affordable housing development agreement. This includes monitoring annual progress toward achieving affordability goals; providing information to developers on details about how the program is implemented, beginning work on a second set-aside parcel.

Assist City staff with the implementation of policies outlined in the Comprehensive Plan Housing Element, such as incorporating cottage housing into the Land Use Code, providing incentives for special needs housing in the Land Use Code, and creating and implementing a work plan for providing sufficient land for housing.

Kenmore

Downtown Site. Assist with the review of responses to the City's RFQ for their Downtown site. Also assist staff with the public process associated with the design and feasibility work associated with the Downtown site.

Downtown Plan /LakePointe: As needed, work with City staff to implement the requirement to provide affordable units in the downtown area and/or the LakePointe master planned development.

Housing Regulations: Assist city staff with their update of its zoning and subdivision codes as they relate to housing and housing affordability.

Kirkland

Assist City staff with follow-up work related to the recommendations of the

Housing Task Force. This will include developing regulations to encourage affordable housing as part of market rate housing development, analyzing the outcome of the innovative housing demonstration projects and preparing permanent innovative housing regulations, preserving existing affordable housing, developing regulations for duplexes and triplexes that fit in single-family zones, and using a small surplus city property for innovative housing (e.g. cottages).

Assist City staff with housing issues as part of neighborhood plan updates.

Mercer Is.

Assist staff to evaluate incentive programs to include affordable housing within new developments, particularly in the Town center. .

Assist City Staff and Planning Commission with updating the Housing Strategy Plan, and with initial implementation of high priority strategies.

Newcastle

Assist City staff with final adoption of the Housing Strategy Plan and with initial implementation of high priority strategies.

Assist City staff in reviewing development agreements for any project that would include an affordable housing requirement, including those related to the Community Business Center.

Redmond

Help with update of housing regulations related to the update in the Housing Element of the Comprehensive Plan that are part an overall housing initiative, that will result in the development of a package of policy and regulatory reforms to help increase the supply and diversity of new housing.

Continue to assist with negotiating, and administering the provision of affordable housing in developments required to provide affordable housing units pursuant to city regulations.

Help with the development of an incentive package to encourage affordable housing. May include help with convening a panel of builders and developers to speak to the Planning Commission.

Assist in making ADU presentation to Grass Lawn Neighborhood Association pursuant to Neighborhood Plan policy.

Assist in implementing and analyzing the outcome of an innovative housing ordinance and pilot program and preparing regulatory amendments to allow innovative styles or housing products that are deemed appropriate in Redmond.

Woodinville

Continue work to assist City staff and Planning Commission with ways to encourage housing in the Downtown/Little Bear Creek Master Plan area.

Sammamish

The City has completed its Housing Plan as part of adopting its first Comprehensive Plan and is now working on a number of related initiatives . ARCH staff will assist City staff on several of these efforts including:

- Prepare a Housing Strategy Plan which will identify and prioritize strategies the City can take to achieve policies in their housing element.
- Assist with background research and community process associated with housing components of the Town Center plan.
- Assist with initial implementation of high priority strategies identified in the Housing Strategy Plan. These may include items such as evaluating existing regulations and efforts to encourage Accessory Dwelling Units, regulatory incentives to include affordable units within private developments, innovative housing demonstration program.

King County See Regional/Planning Activities below.

Complete standard covenants, and monitor the implementation of the Northridge/Blakely Ridge affordable housing development agreement. This includes monitoring annual progress toward achieving affordability goals; and providing information to developers on details about how the program is implemented.

General Assistance**.** In the past, there have been numerous situations where member staffs have had requests for support on issues not explicitly listed in the Work Program. Requests range from technical clarifications, to assisting with negotiating agreements for specific development proposals, to more substantial assistance on unforeseen work. ARCH sees this as a valuable service to its members and will continue to accommodate such requests to the extent they do not jeopardize active work program items.

B. Regional/Countywide Planning Activities

Affordable Housing Tracking System. The Growth Management Act/Countywide Affordable Housing Policies call for jurisdictions to track the development/preservation of housing affordable to low and moderate income families. This work is being coordinated through the Benchmarks Task Force. ARCH staff will continue to assist cities and the County with collecting data needed for Benchmarks.

Objective: Collection and analysis of data as specified in Benchmark Task Force report.

Maintain an eastside housing database for storing benchmark and related housing data. The database should allow the creation of standardized reports, yet be flexible enough to also meet the individual reporting needs of members. This database will be updated to include permit data and funding activities from 2005.

County-Wide Housing Committees. Support local staff by providing staff support as needed to

'regional'/statewide working groups/committees, and disseminating key information back to local staffs. Groups include the Growth Management Planning Council (GMPC), the McKinney review team, and DCTED Housing Trust Fund Policy Advisory Team.

Committee to End Homelessness (CEH). Anticipated work of the CEH in the coming year include: endorsements of the 10 Year plan by local governments and other groups; evaluating ways to more effectively use existing resources; develop guidelines and allocate the initial round of HB 2163 funds, and initiating several specific proposals for East King County. ARCH staff work on the 10 Year Plan could include providing staff support to cities who are reviewing the plan and/or providing staff support to the Interagency Council. Another role could be to assist with creating an ongoing dialogue and planning effort within East King County of agencies and providers to better coordinate local efforts to tie into the work of CEH.

Objective: Keep member jurisdictions informed of significant regional issues and pending legislation that could affect providing housing in East King County.

Ensure that perspectives of communities in East King County are addressed in regional housing activities, including the Committee to End Homelessness.

Have one or more specific local programs initiated as part of the 10 Year Plan to End Homelessness.

III. HOUSING PROGRAM IMPLEMENTATION

Monitoring Affordable Units. Administer ongoing compliance of affordability requirements. This includes affordable housing created through land use approvals and through direct assistance (e.g. Trust Fund allocation, land donations) from member jurisdictions. Some projects also require monitoring of project cash flow related to loans made by jurisdictions to projects. Other public funders are becoming increasingly interested in monitoring efforts, and are exploring ways to cooperate with one another with monitoring.

Objective: Ensure projects are in compliance with affordability requirements which involves collecting annual reports from projects, screening information for compliance, and preparing summary reports for local staffs. To the extent possible this work shall:

- Minimize efforts by both owners and public jurisdictions;
- Coordinate ARCH's monitoring efforts with efforts by other funding sources such as using shared monitoring reports;
- Utilize similar documents and methods for monitoring developments throughout East King County.
- Ensure accurate records for affordable ownership units, including audit units for owner occupancy and proper recording of necessary documentation.
- Establish working relationship with other public organizations that can help assess how well properties are maintained and operated (e.g. code compliance, police, and schools).

Mailing List of Low/Moderate Income Households Maintain a list of families potentially interested in affordable housing (both rental and ownership) created through the efforts of the

participating jurisdictions.

Objective:.Maintain lists of affordable housing in East King County, and making that available as needed to people looking for affordable housing.

Maximize use of the ARCH web site to assist persons looking for affordable housing.

Relocation Plans. Assist as necessary with preparing relocation plans and coordinate monitoring procedures for developments required to prepare relocation plans pursuant to local or state funding requirements.

Objective: Maximize efforts to ensure that existing households are not unreasonably displaced as a result of the financing or development of new or existing housing.

IV. SUPPORT/EDUCATION/ADMINISTRATIVE ACTIVITIES

Education/Outreach. Education efforts should include 'Big Picture' subject matters and, in some cases, tie into efforts related to public outreach/input on regional housing issues. However, much of ARCH's outreach/education work will occur through work with individual members on local housing efforts. Potential outreach tools include the ARCH video, a display board, a portfolio of successful projects, ARCH brochure, and housing tours.

Objective: With the assistance of the broader community, develop education tools to inform councils, staffs and the broader community of current housing conditions, and of successful efforts achieved in recent years.

ARCH Web site. This site will be primarily geared to those utilizing programs administered through ARCH (e.g. listing of available rental and ownership affordable units, application for Trust Fund, consumer information on Accessory Dwelling Units, linkages to other housing related services in the community). There is some information on the site related to local housing issues and efforts, and it is hoped that this will be expanded in the coming year through materials developed as part of ARCH's grant from the Innovations in American Government Award.

Objective: Maintain the ARCH web site and complete the community outreach portion.

Make presentations, including housing tours, to at least 10 community organizations.

Media coverage on at least six topics related to affordable housing in East King County related to work done by Cities/ARCH and articles in local city newsletters.

Advice to Interested Groups. Provide short-term technical assistance to community groups, churches and developers interested in community housing efforts. Meet with groups and provide suggestions on ways they could become more involved.

Objective: Increase awareness of existing funding programs (e.g. rental rehab) by potential

users.

Increase opportunities of private developers and Realtors working in partnership with local communities on innovative/affordable housing.

Administrative Procedures. Prepare quarterly budget performance and work program progress reports. Prepare the Annual Budget and Work Program. Staff the Executive and Citizen Advisory Boards.

Objective: Maintain a cost effective administrative budget for ARCH, and keep expenses within budget. Administrative costs should be equitably allocated among ARCH's members.

Maintain membership on the ARCH Citizen Advisory Board that includes broad geographic representation and wide range of housing and community perspectives.

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2006 ARCH Administrative Budget

Draft 12/3/05

I. ANNUAL OPERATING EXPENSES

Item		2005 Budget	2006 Budget	Change Budget	Change Percent
Staffing *					
	Housing Manager	$90,672	$95,244	$4,571	5%
	Benefits	$18,611	$21,360	$2,749	15%
	Housing Planner I	$67,856	$70,698	$2,842	4%
	Benefits	$16,493	$18,656	$2,163	13%
	Housing Planner II	$53,944	$57,809	$3,865	7%
	Benefits	$15,317	$17,347	$2,030	13%
	ClerkI	$50,014	$44,094	($5,920)	-12%
	Benefits	$14,934	$15,846	$912	6%
	Part time ClerkII	$20,521	$21,190	$668	3%
	Benefits	$11,790	$12,847	$1,057	9%
	Sub-Total	$360,153	$375,091	$14,938	4%
Rent at Family Resource Center		$10,630	$11,120	$490	5%
Utilities		Incl ^	Incl ^	NA	NA
Telephone		$2,575	$2,575	$0	0%
Other Expenses					
	Travel/Training	$2,000	$2,000	$0	0%
	Auto Mileage	$2,060	$2,225	$165	8%
	Copier Costs	$2,000	$2,090	$90	5%
	Office Supplies	$1,970	$2,029	$59	3%
	Office Equipment	$4,400	$4,400	$0	0%
	Fax/Postage	$2,266	$2,334	$68	3%
	Periodical/Membership	$3,358	$3,450	$92	3%
	Misc.(e.g. events,etc)	$2,000	$2,000	$0	0%
	Insurance	$5,096	$5,800	$704	14%
	Capital Equipment	$0	$2,870	$2,870	NA
	Sub-Total	$25,150	$29,198	$4,048	16%
TOTAL		$398,508	$417,983	$19,476	5%

* Actual salary increases based on Bellevue's approved Cost of Living Adjustment. (Draft budget COLA = 2.07%)

II. ARCH ADMINISTRATIVE BUDGET: 2005 IN-KIND CONTRIBUTIONS

	Annual Cost	Value of In-Kind Contribution Bellevue	King County	Required Cash
Salary				
Manager	$95,244	$95,244		$0
Benefits	$21,360	$21,360		$0
Associate Planner	$70,698			$70,698
Benefits	$18,656			$18,656
Assistant Planner	$57,809		$0	$57,809
Benefits	$17,347		$0	$17,347
ClerkI	$44,094			$44,094
Benefits	$15,846			$15,846
ClerkII	$21,190			$21,190
Benefits	$12,847			$12,847
Sub-Total	$375,091	$116,603	$0	$258,487
Rent at Family Resource Center	$11,120			$11,120
Utilities	Incl ^			NA
Telephone	$2,575			$2,575
Travel/Training	$2,000			$2,000
Auto Mileage	$2,225			$2,225
Copier Costs	$2,090			$2,090
Office Supplies	$2,029			$2,029
Office Equipment	$4,400			$4,400
Fax/Postage	$2,334			$2,334
Periodical/Membership	$3,450			$3,450
Misc.	$2,000			$2,000
Insurance	$5,800			$5,800
Sub-Total	$29,198	$0	$0	$26,328
	$417,983	$116,603	$0	$301,380

III. ARCH ADMINISTATIVE BUDGET: RESOURCE DISTRIBUTION

A. Cash Contributions	2005	2006	Change	Percent Change
Bothell	$31,490	$33,064	$1,574	5.0%
Issaquah	$11,810	$12,400	$590	5.0%
King County	$40,757	$42,795	$2,038	5.0%
Kirkland	$48,024	$50,425	$2,401	5.0%
Mercer Island	$24,011	$25,211	$1,201	5.0%
Newcastle	$8,003	$8,403	$400	5.0%
Redmond	$48,024	$50,425	$2,401	5.0%
Woodinville	$9,560	$10,038	$478	5.0%
Beaux Arts Village	$1,261	$1,324	$63	5.0%
Clyde Hill	$2,137	$2,244	$107	5.0%
Hunts Point	$1,261	$1,324	$63	5.0%
Medina	$2,137	$2,244	$107	5.0%
Yarrow Point	$1,261	$1,324	$63	5.0%
Sammamish	$37,113	$38,968	$1,856	5.0%
Kenmore	$20,243	$21,256	$1,012	5.0%
TOTAL	$287,091	$301,445	$14,355	

B. In-Kind Contributions	2005	2006	Change	Percent Change
Bellevue	$111,371	$116,603	$5,232	4.7%
Newcastle	$0	$0	$0	
Redmond	$0	$0	$0	
Woodinville	$0	$0	$0	
Yarrow Point**	$0	$0	$0	
TOTAL	$111,371	$116,603	$5,232	4.7%

C. Total Contributions	2005	2006	Change	Percent Change
Bellevue	$111,371	$116,603	$5,232	4.7%
Bothell	$31,490	$33,064	$1,574	5.0%
Issaquah	$11,810	$12,400	$590	5.0%
King County	$40,757	$42,795	$2,038	5.0%
Kirkland	$48,024	$50,425	$2,401	5.0%
Mercer Island	$24,011	$25,211	$1,201	5.0%
Newcastle	$8,003	$8,403	$400	5.0%
Redmond	$48,024	$50,425	$2,401	5.0%
Woodinville	$9,560	$10,038	$478	5.0%
Beaux Arts Village	$1,261	$1,324	$63	5.0%
Clyde Hill	$2,137	$2,244	$107	5.0%
Hunts Point	$1,261	$1,324	$63	5.0%
Medina	$2,137	$2,244	$107	5.0%
Yarrow Point	$1,261	$1,324	$63	5.0%
Sammamish	$37,113	$38,968	$1,856	5.0%
Kenmore	$20,243	$21,256	$1,012	5.0%
TOTAL	$398,462	$418,049	$19,587	4.9%
TOTAL COSTS	$398,508	$417,983	$19,476	4.9%
BALANCE	($46)	$65		

CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Elaine Borjeson, Solid Waste Coordinator
Daryl Grigsby, Public Works Director

Date: January 5, 2006

Subject: RESOLUTION TO RELINQUISH THE CITY'S INTEREST IN A PORTION OF UNOPENED RIGHT OF WAY

RECOMMENDATION**:**

It is recommended that the City Council adopt the enclosed Resolution, relinquishing interest in the north 8 feet of the unopened alley abutting the south boundary of the property described by the following abbreviated legal description: Ptn Lots 7-9, LAKE AVE ADDN., Vol. 6, Pg 86. (the full legal description is included in the Resolution).

BACKGROUND DISCUSSION:

The unopened alley abutting the property of 649 12th Avenue was originally platted and dedicated in 1891 as the Supplementary Plat to Kirkland. The Five Year Non-User Statute provides that any street or right-of-way platted, dedicated or deeded prior to March 12, 1904, which was outside City jurisdiction when dedicated and which remains unopened or unimproved for five continuous years is then vacated. The subject right-of-way has not been opened or improved.

Roger Paul Quincoses and Lisa James, the owners of the property abutting this right-of-way, submitted information to the City claiming the right-of-way was subject to the Five Year Non-User Statute (Vacation by Operation of Law), Laws of 1889, Chapter 19, Section 32. After reviewing this information, the City Attorney believes the approval of the enclosed Resolution is permissible.

Attachments: Resolution
Vicinity Map

QUINCOSES PROPERTY NON-USER VACATION
649 12TH AVE

- Quincoses Property
- Proposed Vacation
- Granted Non-User Vacation
- Pedestrian Easement
- Building Outline
- School
- Park

CITY OF KIRKLAND WASHINGTON

Produced by the City of Kirkland.

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No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.

Map Printed October 27, 2005 - Public Works GIS

RESOLUTION R - 4544

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RELINQUISHING ANY INTEREST THE CITY MAY HAVE IN AN UNOPENED ALLEY AS DESCRIBED HEREIN AND REQUESTED BY PROPERTY OWNERS ROGER PAUL QUINCOSES AND LISA JAMES.

WHEREAS, the City has received a request to recognize that any rights to the land originally dedicated in 1891 as right-of-way abutting a portion of the Supplementary Plat to Kirkland have been vacated by operation of law; and

WHEREAS, the Laws of 1889, Chapter 19, Section 32, provide that any county road which remains unopened for five years after authority is granted for opening the same is vacated by operation of law at that time; and

WHEREAS, the area which is the subject of this request was annexed to the City of Kirkland, with the relevant right-of-way having been unopened; and

WHEREAS, in this context it is in the public interest to resolve this matter by agreement,

Now, therefore, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. As requested by property owners Roger Paul Quincoses and Lisa James, the City Council of the City of Kirkland hereby recognizes that the following described right of way has been vacated by operation of law and relinquishes all interest it may have, if any, in the portion of right-of-way described as follows:

A portion of unopened alley being identified as the north 8 feet of unopened alley abutting the south boundary of the following described property:

That portion of Lots 7, 8 and 9, Block 28, LAKE AVENUE ADDITION TO KIRKLAND, according to the plat thereof recorded in Volume 6 of Plats, page 86, records of King County, Washington; AND that portion of Lots 12, 13, 14 and 15, Block 240, SUPPLEMENTARY PLAT TO KIRKLAND, according to the plat thereof recorded in Volume 8 of Plats, page 5, records of King County, Washington, described as follows:

Commencing at a monument 5 feet east of the center line of 6th Street;
thence north 86°46'15" east along the center line of 12th Avenue a distance of 541.36 feet;
thence south 3°13'45" east a distance of 30 feet to a point 3 feet westerly of the northeast corner of Lot 9 and the TRUE POINT OF BEGINNING;
thence south 3°13'45" east a distance of 60.00 feet;
thence north 86°46'15" east a distance of 6.00 feet;
thence south 3°13'45" east a distance of 60.00 feet to a point 3.00 feet easterly of the

southeast corner of Lot 16;
thence north 86°46'15" east a distance of 117.00 feet to the southeast corner of Lot 12;
thence north 3°13'45" west a distance of 28.50 feet to the northeast corner of Lot 12;
thence south 87°34'59" west a distance of 60.00 feet to the northwest corner of Lot 13;
thence north 3°13'45" west a distance of 90.65 feet to the northeast corner of Lot 7;
thence south 86°46'15" west a distance of 63.00 feet to a point 3 feet westerly of the northeast corner of Lot 9 and the TRUE POINT OF BEGINNING.

Section 2. This resolution does not affect any third party rights in the property, if any.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006.

Signed in authentication thereof this _____ day of _____, 2006.

_____
MAYOR

Attest:

_____
City Clerk

CITY OF KIRKLAND

123 FIFTH AVENUE KIRKLAND, WASHINGTON 98033-6189 (425) 587-3030

CITY ATTORNEY'S OFFICE
MEMORANDUM

To: Dave Ramsay, City Manager

From: Robin S. Jenkinson, City Attorney

Date: January 5, 2006

Subject: Resolutions Supporting Lake Washington School District Ballot Measures

RECOMMENDATION:

That the Council consider the attached resolutions following a public hearing.

BACKGROUND DISCUSSION:

On February 7, 2006, Kirkland voters will be asked to vote on three ballot measures for the Lake Washington School District: an Educational Programs and Operations Levy; a Capital Projects Levy; and a Modernization Bond Measure.

Proposition No. 1, the Educational Programs and Operations Levy would: provide local funding for programs and educational improvement efforts; provide over 19% of District operating funds; and support costs not fully funded by the state. The Educational Programs and Operations Levy would pay for: additional staff beyond those funded by the state; teacher planning and preparation time; and programs to meet student instructional needs such as Special Education, English Language Learners, gifted, and safety net. Further, the Educational Programs and Operations Levy would pay for: instructional materials and textbooks; all funding for extra curricular activities and athletics; safety and security; transportation; and facility maintenance. Because nearby districts (Bellevue and Northshore) have a higher levy lid or greater salary allocation from the legislature, the Lake Washington School District must use more of its Educational Programs and Levy dollars to keep salaries at a level that attracts quality staff.

Proposition No. 2, the Replacement of Existing Capital Projects Levy, has two sections: facilities improvement projects; and continuation of the District's technology plan. If approved, the facilities improvement portion of the Levy would provide funding for the following: safety ($3.5 m); energy ($5.0 m); building systems ($16.7 m); fields and playgrounds ($3.5 m); individual school projects ($2.5 m) for a total of $31.2 m. If approved, the technology plan portion of the Levy would provide funding for the following: classroom computers ($12.0 m); network upgrades ($2.5 m); training and software ($7.4 m); support staff computers ($1.0 m); technology projects
($1.2 m); and supportive technologies ($9.4 m) for a total of $33.5 m.

Proposition No. 3, would authorize the District to issue $436,000,000 of general obligations bonds to modernize: Lake Washington High; Finn Hill and Rose Hill Junior Highs; Bell, Frost, Keller, Muir, Rush, Sandburg, and Community Elementary Schools and International Community School. The funds would also be used to construct and equip a new elementary school on the Sammamish Plateau.

The three attached resolutions correspond to and express the Council's support for each of the Lake Washington School District ballot measures. Under RCW 42.17.130, the Council may vote on a resolution to support or oppose a ballot proposition "so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of any opposing view; . . ."

The City Clerk published notice of the public hearing and included the ballot titles and proposition numbers in the notice.

Jan06\LWSDmemo

RESOLUTION R-4545

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND STATING THE CITY COUNCIL'S SUPPORT FOR LAKE WASHINGTON SCHOOL DISTRICT NO. 414'S PROPOSITION NO. 1 REPLACEMENT OF EXISTING EDUCATIONAL PROGRAMS AND OPERATIONS LEVY.

WHEREAS, on February 7, 2006, voters in the City of Kirkland will decide whether to approve Lake Washington School District No. 414's Educational Programs and Operations Levy; and

WHEREAS, the Educational Programs and Operations Levy provides local funding for programs and educational improvement efforts; and

WHEREAS, the Educational Programs and Operations Levy provides over 19% of District operating funds; and

WHEREAS, the Educational Programs and Operations Levy supports costs not fully funded by the state such as: additional staff; competitive teacher salaries; teacher planning and preparation time; and programs to meet student instructional needs such as Special Education, English Language Learners, gifted and safety net; and

WHEREAS, the Educational Programs and Operations Levy pays for: instructional materials and textbooks; all funding for extra curricular activities and athletics; safety and security; transportation; and facility maintenance; and

WHEREAS, nearby districts (Bellevue and Northshore) have a higher levy lid or greater salary allocation from the legislature and as a result the Lake Washington School District must use more of its Educational Programs and Operations Levy dollars to keep salaries at a level that attracts quality staff; and

WHEREAS, the investment in top-quality education for our children is an important part of the quality of life enjoyed by Kirkland residents; and

WHEREAS, pursuant to State law, RCW 42.17.130, the City Council of Kirkland desires to show its support for the Lake Washington School District No. 414's Educational Programs and Operations Levy;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Council hereby supports Lake Washington School District No. 414 Proposition No. 1, Replacement of Existing Educational Programs and Operations Levy.

Section 2. The City Council hereby urges Kirkland voters to support the Educational Programs and Operations Levy measure to ensure continued high quality education to the benefit of our community and quality of life.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006.

Signed in authentication thereof this _____ day of _____, 2006.

_____
MAYOR

Attest:

_____
City Clerk

Reso\LWSDProp 1

RESOLUTION R-4546

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND STATING THE CITY COUNCIL'S SUPPORT FOR LAKE WASHINGTON SCHOOL DISTRICT NO. 414'S PROPOSITION NO. 2 REPLACEMENT OF EXISTING CAPITAL PROJECTS LEVY.

WHEREAS, on February 7, 2006, voters in the City of Kirkland will decide whether to approve Lake Washington School District No. 414's Capital Projects Levy; and

WHEREAS, the Capital Projects Levy has two sections: facilities improvement projects; and continuation of the District's technology plan; and

WHEREAS, the facility improvement projects include: safety ($3.5 m); energy ($5.0 m); building systems ($16.7 m); fields and playgrounds ($3.5 m); and individual school projects ($2.5 m) for a total of $31.2 m; and

WHEREAS, the District's technology plan includes: classroom computers ($12.0 m); networking upgrades ($2.5 m); training and software ($7.4 m); support staff computers ($1.0 m); technology projects ($1.2 m); and supportive technologies ($9.4) for a total of $33.5 m; and

WHEREAS, the investment in top-quality educational facilities and technology for our children is an important part of the quality of life enjoyed by Kirkland residents; and

WHEREAS, pursuant to State law, RCW 42.17.130, the City Council of Kirkland desires to show its support for the Lake Washington School District No. 414's Capital Projects Levy;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Council hereby supports Lake Washington School District No. 414 Proposition No. 2, Replacement of Existing Capital Projects Levy.

Section 2. The City Council hereby urges Kirkland voters to support the Capital Projects Levy measure to ensure continued high quality education to the benefit of our community and quality of life.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006.

Signed in authentication thereof this _____ day of _____, 2006.

_____
MAYOR

Attest:

_____
City Clerk

Reso\LWSDProp2

RESOLUTION R-4547

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND STATING THE CITY COUNCIL'S SUPPORT FOR LAKE WASHINGTON SCHOOL DISTRICT NO. 414'S PROPOSITION NO. 3 GENERAL OBLIGATION BONDS - $436,000,000.

WHEREAS, on February 7, 2006, voters in the City of Kirkland will decide whether to approve Lake Washington School District No. 414's General Obligation Bonds - $436,000,000; and

WHEREAS, the General Obligation Bonds would provide funding to modernize: Lake Washington High; Finn Hill and Rose Hill Junior Highs; Bell, Frost, Keller, Muir, Rush, Sandburg and Community Elementary Schools and International Community School; and

WHEREAS, under the current four-phase modernization plan, modernization is: upgrading all basic systems including heat, electricity, and water; building a new building on the old site where that is more cost—effective than fixing up the old building; realigning the school layout to accommodate current instructional programs; and building in instructional technology; and

WHEREAS, the investment in top-quality educational facilities for our children is an important part of the quality of life enjoyed by Kirkland residents; and

WHEREAS, pursuant to State law, RCW 42.17.130, the City Council of Kirkland desires to show its support for the Lake Washington School District No. 414's General Obligation Bonds - $436,000,000;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Council hereby supports Lake Washington School District No. 414 Proposition No. 3, General Obligation Bonds - $436,000,000.

Section 2. The City Council hereby urges Kirkland voters to support the General Obligation Bonds measure to ensure continued high quality education to the benefit of our community and quality of life.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006.

Signed in authentication thereof this _____ day of _____, 2006.

_____
MAYOR

Attest:

_____
City Clerk

Reso\LWSDProp 3

CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.587-3225
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Eric Shields, Planning Director

Date: January 10, 2006

Subject: TOTEM LAKE MALL DEVELOPMENT AGREEMENT
FILE NO. DRC05-00005

RECOMMENDATION

Reopen the public hearing continued from January 3. After receiving public comment, discuss whether further revisions are desired to the attached final draft Redevelopment Agreement for the Totem Lake Mall. Allow an opportunity for representatives of the Mall owners (DDR) to respond to any proposed revisions. Decide upon any final revisions and adopt the attached ordinance which will authorize the City Manager to sign the final Agreement on behalf of the City.

BACKGROUND DISCUSSION

On January 3, 2006, the City Council conducted a public hearing on a draft Redevelopment Agreement for the Totem Lake Mall. At that time, staff presented an outline summarizing those sections of the draft Agreement in which the staff and DDR had not agreed to final language. Staff also presented proposed revisions that had been negotiated with DDR subsequent to preparation of the Council packet. The City Council discussed the draft Agreement and directed further revisions. The hearing was continued to January 17. The attached draft Redevelopment Agreement reflects the direction provided by the City Council at the January 3 hearing. The Agreement is acceptable to DDR.

Previously Unresolved Issues Below is a list of the previously unresolved sections of the Redevelopment Agreement with a brief discussion of how the final draft Agreement addresses each issue.

Section 3.1 SEPA: The language in this section is the same as in the previous draft. Reference is made to SEPA mitigating measures in Exhibit B. The mitigations included in Exhibit B are:

- The south driveway on 120th Ave. NE shall be restricted to right turns in and out. Center curbing shall be constructed in 120th Ave, NE to prevent left turns.
- DDR shall agree not to contest construction of center curbing in Totem Lake Blvd. near 120th Ave. NE if the City constructs such curbing in the future.
- Traffic signals shall be installed at the intersections of 120th Ave. NE with Totem Lake Way and the Plaza.
- On-street parking along the Upper Mall Plaza shall be configured to minimize safety conflicts with traffic moving between 120th Ave. NE and the parking garage.
- A Transportation Demand Management Program shall be prepared.

It is anticipated that the above mitigations will be incorporated into a Mitigated Determination of Non-significance that will be issued on January 16. A fourteen day appeal period will follow. If appeals are received and as a result additional mitigating measures are required, DDR reserves the right to terminate the Redevelopment Agreement.

Section 3.7 Termination of Easements: In this section, the City agrees to terminate existing easements on the Upper Mall portion of the site. The location of the easements was generally described to the City Council on January 3.

Section 4.1.1 Plaza Specifications: Reference is made to Exhibit C Design Standards. Revisions to Exhibit C were presented to the City Council on January 3. At that time, DDR had agreed to the revisions in principle. The language in the attached final draft Agreement is the same as was presented on January 3 except that paragraph 1 regarding General Standards has been revised to allow for improvements to deviate from normal City requirements upon mutual agreement or if approved by the Design Review Board.

Section 4.1.2(b) Budget Constraints: This section has been revised to delete from the Plaza project a traffic signal at the intersection of Totem Lake Blvd. and the Plaza. As a result, the Plaza budget was reduced to $3.6 million. This section was also revised to indicate that the selection of art for the Plaza must be mutually acceptable to the City and DDR.

Section 4.6.1 Lease Transfer Amount for Lower Mall Improvements: This section reflects the payment concepts presented to the City Council on January 3. On the leasing date (which by definition will not occur until after a building permit is issued for the Upper Mall) the City agrees to pay 100% of the land and actual construction cost of Lower Plaza at time that the Lower Mall is completed. The City will hold back 25% of improvement cost if less than 160,000 sq. ft. of the Lower Mall is occupied. Any hold-back will be due when payment for Upper Mall improvements is made.

Section 4.8.1 Payment of Lease Transfer: Echoing Section 4.6.1, City payment for the Lower Plaza will be made only after the Developer obtains a building permit for the Upper Mall. Payment for the Upper Plaza (and for the Parking Garage, as stated in Section 5.10.1) will be made only after tenants occupy at least 90,000 sq. ft. and lease at least an additional 60,000 sq. ft. of the Upper Mall.

Section 4.9.5 Closing Costs: This section has not been changed from the previous draft. A Real Estate Excise Tax must be paid with the sale of right of way to the City (approximately $110,000). The REET payment is included in the budget for the Plaza and 120th Ave. NE. If the combined cost of the Plaza and 120th Ave. NE is within the $7.3 million budget, the REET will be included in the City's $15 million contribution. If the combined cost exceeds the budget, the City will pay the portion of the REET that exceeds the budget, in addition to the $15 million contribution.

Section 4.10 Maintenance: This section has not been revised. A new section 12.4 has been added to the Agreement which indicates that the Developer will carry general liability insurance during the maintenance period.

Section 4.12 Use of Plaza: Reference is made to Exhibit D which shows covenants that will allow tenants to use the Plaza. Revisions to Exhibit D, assuring that tenant use does not interfere with normal public use, were presented to the City Council on January 3. At that time DDR had agreed to the revisions in principle, but had not fully agreed to the final language. The language in the attached final draft Agreement requires that there be a continuous unobstructed sidewalk width of eight feet.

Section 5.10.1 Payment of Lease Transfer Amount: This section reflects the concept presented to the City Council at the January 3 hearing, to which both staff and DDR had agreed in principle. Payment for the parking

garage (and for the Upper Plaza, as stated in Section 4.8.1) will be made only after tenants occupy at least 90,000 sq. ft. and lease at least an additional 60,000 sq. ft. of the Upper Mall.

Section 6.1.2 120th Ave. NE Plans and Specifications: This section has been revised to add a traffic signal at the intersection of 120th Ave. NE and Totem Lake Way. As a result, the 120th Ave. NE budget also was increased to $3.7 million.

Section 6.4 Selection of Contractors; Approval of Bids: Revisions to this section have been made to use a competitive bidding process for construction work on the 120th Ave. NE improvements. The language has been reviewed and approved by the City's legal counsel.

Sections 6.6.1 Insurance: This section is now covered by Section 6.1.4 which indicates that the Developer will carry general liability insurance during the maintenance period.

Section 7.1.1 Transportation: Revisions to this section are substantively the same as the revised wording presented to the Council at the January 3 hearing, which both staff and DDR had agreed to in principle.

ARTICLE VIII CITY FINANCIAL PARTICIPATION: This section summarizes costs payable by the City. The language in this section has been changed to reflect the reduced cost of Plaza improvements due to the elimination of the traffic signal on Totem Lake Blvd. and the corresponding increased cost of 120th Ave NE improvements due to the addition of a traffic signal on Totem Lake Way.

ARTICLE IX VESTING: The **l**anguage in this section has not substantively changed from the previous draft. Throughout the duration of the agreement (10 years), the Mall will vest with development laws existing as of the effective date of the agreement. If the City adopts new laws, the Mall may choose to use any of the new laws without adversely affecting its rights under other vested laws.

<u>Other Issues Raised by Council members</u> In addition to the unresolved issues discussed above, City Council members raised the following other issues:

1. Assure that proposed residential uses will be constructed.
2. Assure that the development includes wide continuous awnings.
3. Include designated motorcycle parking in the project.
4. Provide a direct pedestrian connection to Evergreen Hospital and the adjacent transit center.
5. Include attractive new transit shelters along 120th Ave. NE.
6. Provide additional information on traffic issues.

Issues 1-5 are addressed in an attached letter from Charles Worsham of DDR. Issue 4 is further addressed in an attached memorandum from Jon Regala. Information concerning issue 6 is provided in a memorandum from Thang Nguyen.

<u>Summary of City Costs And Timing of Payments</u> The following table shows the approximate breakdown of City costs and when payment will be due:

Improvements	Payment		
	Completion of Lower Mall	**Completion of Upper Mall**	**Total**
Plaza improvements[1]	$2,400,000[2]	$1,200,000[4]	$ 3,600,000
120th Ave. NE improvements	$3,700,000[3]		$ 3,700,000
Right of Way purchase (@$30/ sq. ft.)[1]	$2,100,000[1/3]	$900,000[4]	$ 3,000,000
Parking garage		$4,700,000[4]	$ 4,700,000
Total	$8,200,000	$6,800,000	$15,000,000
Potential Additional Costs			
• REET (if actual costs are > $7.3M)			$0 - 110,000
• City requested enhancements (if actual costs are > $7.3M)			$?

Footnotes:

1. The proportion of Plaza improvement costs allocated to the Lower and Upper Malls and the proportion of land costs allocated to the Lower Plaza, Upper Plaza and 120th Ave NE are rough estimates.
2. Payment for Lower Plaza improvements and right of way acquisition is due after a building permit for the Upper Mall is issued. A 25% hold-back of Lower Plaza improvement costs (+/-$600,000) will occur if less than 160,000 sq. ft. of the Lower M all is occupied. The hold-back is due when payment is made for the Upper Mall improvements.
3. Payment for 120th Ave. NE improvements and associated right of way is due when street work is completed.
4. Payment for Upper Plaza improvements and right of way and for the Parking Garage condominium unit is due after 90,000 sq. ft. of the Upper Mall is occupied and an additional 60,000 sq. ft. is leased.

Attachments:

1. Final Draft Redevelopment Agreement
2. Letter from Charles Worsham addressing residential uses and design issues
3. Memorandum from Thang Nyugen discussing the transportation analysis
4. Memorandum from Jon Regala regarding the pedestrian connection to Evergreen Hospital
5. Ordinance directing the City Manager to sign the Redevelopment Agreement
6. Summary Ordinance

Es: TL Mall memo to CC meeting 1-17-06

January 11, 2006

REDEVELOPMENT AGREEMENT FOR THE TOTEM LAKE MALL

City of Kirkland, Washington
Coventry II DDR Totem Lake, LLC

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REDEVELOPMENT AGREEMENT
FOR THE TOTEM LAKE MALL

THIS REDEVELOPMENT AGREEMENT ("this Agreement") is made and entered into effective the ____ day of January, 2006, by and between the **CITY OF KIRKLAND**, a municipal corporation duly organized under the laws of the State of Washington ("City"), and **COVENTRY II DDR TOTEM LAKE, LLC**, a Delaware limited liability company ("Developer"). Collectively, the City and the Developer may be referred to herein as the "Parties" and individually as a "Party."

RECITALS

A. The Developer owns approximately 26 acres of real property, commonly known as the Totem Lake Mall ("Mall"), located in the City, as more fully described in **Exhibit A** attached. The Mall is at the heart of the Totem Lake Business District, an area that is designated as a regional "Urban Center" by the Kirkland Comprehensive Plan and King County Countywide Planning Policies. The Comprehensive Plan contains goals and policies that promote redevelopment of the Mall to strengthen its role as a retail center and community gathering place. Mixed use development of the Mall, with high density office and/or residential uses, is also encouraged.

B. The City has recognized the Mall as an under-performing property in need of redevelopment, and therefore has identified redevelopment of the Mall as a top economic development priority.

C. The Developer has prepared a redevelopment proposal for the Mall, which includes extensive demolition, reconfiguration and construction of buildings and improvements, with the completed Mall to be comprised of approximately 1,013,600 square feet of retail and office space, residential units, a cinema, and several parking structures. The redevelopment is contemplated to occur over ten (10) years in several phases, with anticipated completion of the retail components within five (5) years, and anticipated completion of the office and residential components within seven (7) years.

D. The City plans to improve and realign a segment of 120th Avenue NE, which runs generally north to south through the Mall, and is willing to coordinate such improvement and relocation with redevelopment of the Mall.

E. Public use and enjoyment of the Mall will be enhanced by creation of public spaces, consisting of a new east-west public plaza that will function as a public park, parkway or plaza ("Public Plaza"), and improvement of 120th Avenue NE consistent with the new Public Plaza. These improvements will create a regional public gathering place and will be the site of public events.

F. Use of the public spaces, and reduction of traffic congestion, will both be facilitated by City acquisition of parking facilities in the proposed parking structure in the upper portions of the Mall. The Developer is willing to construct and lease to the City, with an option to purchase, a condominium unit representing a portion of the parking structure ("City Garage Unit"). The precise dimensions of the City Garage Unit have yet to be determined, and will be

dependent upon the City's overall financial participation. The City is authorized by Chapter 35.86 RCW to provide off-street parking facilities.

G. The Mall redevelopment is expected to increase tax revenues, which will improve the financial stability and general economic vitality of the City. Furthermore, the creation of a public gathering place, new employment opportunities, and construction of housing at the Mall, adjacent to public transit and other public and private amenities, will materially assist the City in carrying out the goals and objectives of the Kirkland Comprehensive Plan and the Totem Lake Neighborhood Plan.

H. The Developer is willing to undertake significant responsibilities and risks associated with developing and constructing the parking structure and the public plaza, together with obligations regarding the maintenance of those facilities.

I. In view of the public benefits to be gained by the City through acquisition of the Public Plaza, the City Garage Unit, and construction of improvements to 120th Avenue NE , as well through participation in the Mall redevelopment, the City is willing to invest up to $15,000,000.00 in the public elements associated with the Mall redevelopment. The City anticipates that tax and other revenue from the redeveloped Mall will be sufficient to pay the debt service of any Certificates of Participation or City bonds that are issued to fund a portion of the City's $15,000,000.00 investment.

J. To memorialize the City's initial commitment to invest in the public elements of the Mall redevelopment, and to guide the terms and conditions of this Agreement, the City and the Developer entered into a Memorandum of Understanding, approved by the City Council on October 18, 2005.

K. Consistent with the Memorandum of Understanding, the Developer has obtained Design Review Board approval of a Project Plan for the Mall redevelopment. Both the Developer and the City are satisfied and accept the Project Plan as approved by the Design Review Board on November 7, 2005.

L. This Agreement is authorized by RCW 36.70B.170 through 36.70B.210, and the provisions regarding the Public Plaza and the City Garage Unit are authorized by Chapter 35.42 RCW. As required by RCW 36.70B.200, the City held a public hearing on this Agreement on December 13, 2005.

M. By this Agreement, the parties intend to set forth their mutual agreement and understandings as they relate to the Developer's redevelopment of the Mall and the City's acquisition of public improvements to be constructed in conjunction with the Mall redevelopment. As set forth in these Recitals, the City has determined that the terms and conditions set forth herein will serve a public use and will promote the health, safety, prosperity and general welfare of the citizens of the City.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I
DEFINITIONS

1.1 "Actual Costs" mean the total costs, whether direct or indirect, including, but not limited to, building materials, supplies and improvements, infrastructure, labor and services; design; permits and other governmental approvals; general and subcontractor contracts, including, but not limited to, general contractor expenses associated with management, administration, overhead and profit; taxes paid or incurred; legal, testing, inspection and consulting fees and expenses (engineers, architects, construction, attorneys, traffic, survey, geotechnical, design professionals and planners, landscape, appraisal and others); financing and carrying expenses; insurance; performance and/or payment bonds; demolition; bid preparation and administration; equipment and other rental expenses; computer charges; temporary sanitation and site preparation; temporary weather protection; temporary structures; project safety; safety equipment; progress cleanup; barricades and temporary fences; temporary signage; field office equipment, supplies, furniture and other office expenses; telephone and postage; travel; and all other infrastructure, improvements, work or services attributable to the project. Actual Cost shall also include a fee equal to five percent (5%) of the Actual Costs (exclusive of this fee), which shall be payable to the Developer for its management and administration of the project.

1.2 "Agreement" means this Agreement as may be amended in accordance with the terms hereof.

1.3 "Association" means a condominium owners' association created in a Declaration.

1.4 "Certificates of Participation" mean certificates caused to be issued by the City representing interests in rental payments to be made by the City under the City Garage Unit Lease and the Public Plaza Lease pursuant to the provisions of Sections 4 and 5 of this Agreement.

1.5 "City" means the City of Kirkland, Washington.

1.6 "City Financial Participation" means the City's commitment of resources to lease, acquire and/or improve each of the three major public projects (the Public Plaza, the City Garage Unit and the 120th Ave. NE Improvements) pursuant to this Agreement.

1.7 "City Garage Unit" means a unit within the Parking Garage Condominium comprised of stalls for multi-passenger vehicles, to be leased to or otherwise acquired by the City consistent with this Agreement.

1.8 "City Garage Unit Lease" means a lease with a maximum term of twenty-five (25) years, substantially in the form of **Exhibit F** attached and incorporated herein by reference.

1.9 "City Council" means the City Council of the City.

1.10 "Declaration" means the condominium declaration for the Parking Garage Condominium, in form and content acceptable to both the City and the Developer.

1.11 "Design Guidelines" means the Design Guidelines for Pedestrian-Oriented Business Districts, KMC 3.30.040.

1.12 "Developer" means Coventry II DDR Totem Lake, LLC, a Delaware limited liability company, and its lawful successors and assigns.

1.13 "Development Regulations" means those portions of the Kirkland Municipal Code (KMC) and Kirkland Zoning Code (KZC) pertaining to zoning, land use, design, building, construction, landscape, signage, permitting, planning and other elements that govern real estate development within the TL2 Zone.

1.14 "Escrow Holder" means Transnation Title Insurance Company, d/b/a LandAmerica Commercial Services, Seattle Offices, or another nationally recognized title insurance company selected by the Developer and not objected to by the City which shall act as the escrow agent and provide the title insurance policies to be delivered in connection with the transfer of the City Garage Unit Lease and the Public Plaza Lease.

1.15 "Force Majeure" means any circumstances or acts beyond the reasonable control of the Developer or the City which do not arise from a default by or collusion of the Party seeking delay, including, but not limited to, a fire, storm, wind, flood, earthquake, epidemic, explosion, volcanic eruption, earth movement, radioactive contamination, earth slide, quarantine restriction, act of war (whether declared or undeclared), interference by civil or military authority, riot or public discord, civil disturbance, permitting delays, labor strike or other organized labor disruption, delay associated with shortage or unavailability of materials reasonably necessary for the Project, litigation adversely impacting the ability to proceed with all, or portions of, the Project, act of terrorism, sabotage, suspension of the national or State banking system due to financial crisis, or the closing of the New York Stock Exchange due to financial crisis or other such disruption in the financial markets which impair the ability of either party to borrow funds.

1.16 "Franchise Utilities" means electricity, natural gas, telecommunications, and other utilities not provided by the City.

1.17 "Intersections" means the general areas where two or more streets or roadways join or cross, including the streets, roadways and roadside facilities for traffic movement within them.

1.18 "KMC" means the City of Kirkland Municipal Code.

1.19 "KZC" means the City of Kirkland Zoning Code.

1.20 "Lease Transfer Amount" means each of the amounts determined consistent with Section 4.6 and Section 5.7 of this Agreement (collectively, the "Lease Transfer Amounts").

1.21 "Leasing Date" means one or more business days designated by the Developer, which shall be (A) with regard to the City Garage Unit, no earlier than sixty (60) days following Substantial Completion of the Parking Garage; (B) with regard to the Lower Mall Public Plaza Improvements, no earlier than sixty (60) days after issuance of a building permit for a building in

the Upper Mall; and (C) with regard to the Upper Mall Public Plaza Improvements, no earlier than sixty (60) days after Substantial Completion of the Upper Mall Public Plaza Improvements.

1.22 "Lower Mall" means the portion of the Project west of 120th Avenue NE.

1.23 "Lower Mall Public Plaza Improvements" means the Public Plaza Improvements located within that portion of the Project west of 120th Avenue N.E.

1.24 "Parking Garage" means the main parking structure to be constructed on the Upper Mall at the end of the Public Plaza.

1.25 "Parking Garage Condominium" means a condominium to be created pursuant to Washington law, Chapter 64.34 RCW, for the Parking Garage.

1.26 "Phase Plan" means a proposed design plan for a phase of the Project Plan submitted for review to the City's Design Review Board.

1.27 "Project" means the Developer's proposed redevelopment of the Mall and associated facilities.

1.28 "Project Plan" means the "Totem Lake Mall Conceptual Master Plan" which was approved by the City's Design Review Board on November 7, 2005, as may be amended or revised from time-to-time, and which is incorporated by reference in this Agreement.

1.29 "Property" means the Mall, as legally described in **Exhibit A**.

1.30 "Public Plaza" means the land and improvements, which is located perpendicular to 120th Avenue NE and generally in the middle of the Mall. The Public Plaza does not include the right-of-way of 120th Avenue NE and the improvements therein. The Public Plaza, which shall consist of the Upper Mall Public Plaza Improvements and the Lower Mall Public Plaza Improvements, is described generally in the Project Plan and will be constructed by the Developer and leased or otherwise acquired by the City.

1.31 "Public Plaza Improvements" means the improvements constructed pursuant to this Agreement and located within the Public Plaza.

1.32 "Public Plaza Lease" means a lease with a maximum term of twenty-five (25) years, substantially in the form of **Exhibit E** attached and incorporated herein by reference.

1.33 "SEPA" means the Washington State Environmental Policy Act.

1.34 "Substantial Completion" means (A) with regard to the Public Plaza, Developer certification of Substantial Completion, subject to normal punch list items, and City administrative acceptance of the applicable segment of the Public Plaza; and (B) with regard to the Parking Garage, Developer certification of Substantial Completion, subject to normal punch list items, and City issuance of a certificate of occupancy for the Parking Garage.

1.35 "Survey Map and Plans" means the survey map and plans recorded in conjunction with creation of the Parking Garage Condominium, and any subsequent amendments, corrections and addenda thereto.

1.36 "Title Company" means Commonwealth Land Title Insurance Company.

1.37 "TL2 Zone" means the Totem Lake 2 Zone as designated in the Kirkland Comprehensive Plan and implemented through the Development Regulations.

1.38 "Totem Lake Neighborhood Plan" means the Totem Lake Neighborhood Plan approved by the City Council on January 15, 2002.

1.39 "Trust Agreement" means a trust agreement entered into on or before the Leasing Date, which is acceptable to both the City and the Developer governing the issuance of any Certificates of Participation by the City and/or any landlord/tenant or other matters related to the City Garage Unit Lease or the Public Plaza Lease.

1.40 "Trustee" means a trustee selected on or before the Leasing Date by the City, and acceptable to the Developer, to act as the trustee under a Trust Agreement and as successor to the Developer under the City Garage Unit Lease and/or the Public Plaza Lease.

1.41 "Upper Mall" means the portion of the Project east of 120th Avenue NE.

1.42 "Upper Mall Public Plaza Improvements" means the Public Plaza Improvements located within that portion of the Project east of 120th Avenue N.E.

1.43 "Utilities" means both City utilities and Franchise Utilities including, but not limited to, water, sewer, electricity, telecommunications, natural gas, and stormwater conveyance system improvements that serve, or will serve, the redeveloped Mall.

1.44 "120th Avenue NE" means that segment of the 120th Avenue NE right-of-way from, and including, the intersection of 128th Avenue NE to, and including, the intersection of Totem Lake Boulevard.

1.45 "120th Avenue NE Improvements" means the realignment and improvements to 120th Avenue NE as described in Section 6.1.

ARTICLE II
GENERAL PROJECT DESCRIPTION; SCHEDULE

The Developer shall have the right, but not the obligation, to construct the Project. Notwithstanding anything to the contrary in this Agreement, and prior to City payment for a segment of the Public Plaza, the Developer may provide written notice to the City that the Developer elects not to proceed with redevelopment of the Mall in accordance with the Project Plan. In such case, either Party shall have the right and authority to terminate unilaterally this Agreement, and any and all rights and obligations relating thereto, at no cost to either Party. Otherwise, the Developer shall attempt to achieve substantial completion of the retail components of the Project within five (5) years after the effective date of this Agreement, and the

residential and office components of the Project within seven (7) years after the effective date of this Agreement, excluding time periods when the design, construction, or development of the Project is unavoidably delayed by disruptions caused by events of Force Majeure. Phase 1 of the Project generally consists of the partial demolition, reconstruction and new construction for redevelopment of the Lower Mall and ancillary infrastructure and improvements associated therewith, including construction of portions of the Public Plaza and the improvements to 120th Avenue NE as provided for in this Agreement; Phase 2 of the Project generally consists of all other portions of the Project, including construction of the Parking Garage. Phase 1 and Phase 2 may be pursued separately, simultaneously, in sub-phases, or otherwise without regard to completion or progress on any other Phase or sub-phase of the Project.

ARTICLE III
DEVELOPMENT PLANNING

3.1 **SEPA.** The City has conducted extensive environmental review and prepared an environmental impact statement (entitled "Environmental Impact Statement for Kirkland Comprehensive Plan 10 Year Update" and dated October 15, 2004) in conjunction with adoption of its Comprehensive Plan and Development Regulations, which have included within their scope the anticipated level of redevelopment included within the Project. In conjunction with this Agreement, the Developer has submitted an environmental checklist for the entire Project, and the City has issued a State Environmental Policy Act ("SEPA") mitigated determination of nonsignificance for the Project. All SEPA-based conditions necessary to mitigate potential adverse impacts associated with the Project, with the exception of the limited mitigation contemplated for the office building component described below, are set forth in attached **Exhibit B**. The only remaining SEPA review will be in conjunction with construction of the proposed office building to be located above the Parking Garage, which is contemplated as a sub-phase of Phase 2. This limited SEPA review will not require preparation of an environmental impact statement, or any addenda or supplemental reports to the earlier environmental impact statement, and will address only the cumulative transportation impacts of the Project on the intersection of 120th Avenue NE and Totem Lake Boulevard; provided, however, that any mitigation measures for such impacts shall be limited to reduction or mitigation of the impact through implementation of a transportation management plan for the office building. The Parties understand and agree that the appeals period associated with the SEPA threshold determination might not expire prior to the effective date of this Agreement. In such event, the Developer shall have the right within thirty (30) days of receipt of the final SEPA mitigation conditions, to unilaterally terminate this Agreement, at no expense to either Party, in the event that the mitigation conditions set forth in **Exhibit B** are changed, modified or amended in a manner not satisfactory to the Developer, at its sole discretion.

3.2 **Subsequent Land Use and Permit Approvals.** The City will evaluate all subsequent development, demolition and/or construction permit applications for the Project based on consistency with this Agreement and the Project Plan. To the extent permitted by law, the City shall expedite and give priority status to the processing of City land use, permit applications, construction drawings, plans and specifications, and similar or related submissions by the Developer associated with the Project.

3.3 Modifications to Project Plan. Any modifications to the Project Plan shall be made in accordance with the conditions imposed by the Design Review Board and set forth in the Project Plan.

3.4 Phase Design Review.

3.4.1 Phase Design Review shall be required during the Project in accordance with the conditions imposed by the Design Review Board and set forth in the Project Plan.

3.4.2 Phase Design Review approval shall be in accordance with the Development Regulations, and shall be based upon consistency with this Agreement and the Project Plan.

3.5 Modifications to Phase Design Review Approval. Any modifications to an approved Phase Plan shall be made in accordance with the conditions imposed by the Design Review Board and set forth in the approved Phase Plan.

3.6 Binding Site Plan. In order to transfer the Public Plaza and the City Garage Unit to the City, the Developer will require City approval of a binding site plan. The City agrees that the Mall is eligible for binding site plan approval. The City Council through approval of the Agreement, approves a binding site plan within the Mall as necessary to facilitate redevelopment of the Mall in accordance with the Project Plan and this Agreement, subject to a determination by the City Planning Director that the site plan satisfies the criteria of KMC 22.04.040(b) through (f).

3.7 Termination or Amendment of Existing Easements and/or Building Restrictions. In furtherance of the Project Plan, the City hereby approves removal of the restrictive covenant on Tract G of the Plat of Puget Sound Center, dated June, 1970, which required Tract G to remain as permanent open space, with no buildings or other structures allowed thereon. The City also hereby approves removal of the building restrictions imposed on the easterly twelve feet (12') of the Project by instrument recorded under King County Auditor's File No. 7701140502. In addition, to the extent there are additional easements, covenants, restrictions or other encumbrances of record in favor of the City within the Project, the City agrees to terminate or amend such encumbrances to the extent reasonably requested by the Developer in furtherance of the development of the Project and realignment of 120th Avenue NE.

ARTICLE IV
PUBLIC PLAZA

4.1 Preparation of Public Plaza Plans and Specifications, Budget Constraints, and Approval.

4.1.1 Public Plaza Plans and Specifications. The Public Plaza shall be designed to standards for pedestrian and vehicular access and circulation, safety, ease of maintenance, and attractiveness, consistent with standards for similarly situated public plazas associated with regional open-air shopping centers in the Pacific Northwest. The Developer shall prepare plans and specifications for the Public Plaza, which shall be in accordance with this Agreement and

generally consistent with the Public Plaza and 120th Avenue NE Design Standards attached as Exhibit C to this Agreement ("Public Plaza Plans and Specifications").

4.1.2 Budget Constraints.

(a) Unless otherwise mutually agreed between the City and the Developer, the Public Plaza Plans and Specifications shall be based upon a total design and construction budget of not greater than $3,600,000.00.

(b) No traffic signals or traffic or mechanical devices are included in the design and construction budget for the Public Plaza Improvements, nor shall any be required by the City in conjunction with the Public Plaza Improvements, except to the extent requested by the City pursuant to Section 4.2. The budget also includes $100,000.00 for artwork, murals, sculptures and similar features, such as free-standing objects or features incorporated into the Public Plaza Improvements within the Public Plaza ("Artwork"). The Developer agrees to use reasonable efforts to coordinate the selection of this artwork with the City and the Kirkland Arts Council and final selection of artwork for the Public Plaza shall be subject to the mutual agreement of the City and the Developer.

(c) The Developer shall construct the Public Plaza Improvements and 120th Avenue NE Improvements within a combined budget of $7,300,000.00 (excluding the land value). The Developer shall be solely responsible for any cost overrun above the combined budget, except as provided in Section 4.2.

4.1.3 Administrative Approval of Public Plaza Plans and Specifications. The Developer shall use reasonable efforts to coordinate input from the City, and provide an opportunity for the City to review and comment on the proposed Public Plaza Plans and Specifications prior to formal submission for administrative approval. The Developer shall submit the proposed Public Plaza Plans and Specifications to the City for administrative review and approval by the City Planning Director. The administrative review shall be for the purpose of determining if the Public Plaza will function appropriately for the City's needs, will meet or exceed applicable City public works standards, and will be consistent with this Agreement and the Public Plaza Design Standards; provided, however, that City administrative approval of the Public Plaza Plans and Specifications shall not be construed to subject the City to any liability to the Developer or any third party for defects in design. The City Planning Director shall issue his administrative decision approving, denying or requesting modification to the Public Plaza Plans and Specifications within twenty-one (21) days after submission or the Public Plaza Plans and Specifications shall be conclusively deemed approved. In the event of administrative denial or request for modification, the City Planning Director shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. The Developer and the City must approve the Public Plaza Plans and Specifications and, in the event of a dispute, the Dispute Resolution procedures set forth in Article XVI shall apply.

4.2 City Modifications to Public Plaza Plans and Specifications; Credit Toward City Financial Participation. Prior to administrative approval of the Public Plaza Plans and Specifications, or subsequent thereto if mutually agreed in writing by the City and the Developer, the City may request changes and additions to the proposed Public Plaza Plans and

Specifications. If the Actual Costs of the Public Plaza Improvements exceeds $3,600,000.00, then the City shall pay for all of such changes and additions, and shall receive credit toward the City Financial Participation only for the construction budget amount of $3,600,000.00.

4.3 Public Plaza Construction.

4.3.1 Responsibilities of Developer. Subject to the terms of this Agreement, the Developer shall design, finance and construct the Public Plaza at its sole cost and expense, including any loans that Developer may deem necessary to carry out construction. The Public Plaza Improvements shall be carried out by the Developer as part of a single work, construction and improvement comprising the Project, including both private portions (approximately 80% of the total outside area and 95% of the Project overall) and the Public Plaza Improvements to be leased or otherwise acquired by the City (approximately 20% of the total outside area and 5% of the Project overall). The Public Plaza shall be designed to include all Utilities that are necessary to serve the Public Plaza and adjacent private components of the Project; provided, however, that the costs and expenses associated with extensions of lateral water and sewer service lines from mains within the Public Plaza to serve the adjacent private components of the Project shall not be included in the Actual Costs of the Public Plaza and shall be the sole responsibility of the Developer.

4.3.2 Compliance with Laws. The Public Plaza shall be built in compliance with all applicable building code and other laws, rules and regulations, including but not limited to the applicable provisions of Title III of the Americans With Disabilities Act and the regulations issued thereunder by the United States Department of Justice concerning accessibility of places of public accommodation. The Parties recognize, however, that because the Public Plaza is being leased to the City pursuant to Chapter 35.42 RCW, construction of the Public Plaza is not a "public work" or otherwise subject to competitive or public bidding requirements, and that because the Public Plaza Improvements constitute less than 50% of the Project, these improvements are not subject to prevailing wage requirements. Accordingly, the Developer shall not be deemed in breach of this Agreement based upon non-compliance with any laws, rules or regulations relating thereto.

4.3.3 Permits. The Developer shall obtain all permits and authorizations from any federal, state or local government or departments or subdivisions thereof having jurisdiction in order to permit construction of the Public Plaza. The City will process applications for permits and approvals as if such applications were made without any City participation in such project.

4.3.4 Construction Warranty. The Developer's general contractor, pursuant to the construction contract(s) for the Public Plaza, or the Developer, at the Developer's option, shall for one (1) year after Substantial Completion of each segment of the Public Plaza, correct and repair any material defects appearing or developing in the workmanship or materials furnished in respect to the segment of the Public Plaza. If the Developer transfers a segment of the Public Plaza to the City within the one (1) year period, and the Developer's general contractor is responsible for the one (1) year warranty, the Developer shall provide an assignment of the warranty in a form reasonably satisfactory to the City for the remainder of the one (1) year period.

4.3.5 Non-liability of the City. The City shall not be liable for any work performed or to be performed on the Public Plaza for the Developer or for any materials, supplies or equipment furnished or to be furnished to the Developer, and no construction or other liens for such labor, services, materials, supplies or equipment shall attach to any property owned by the City. No part of the cost of construction of the Public Plaza shall ever become an obligation of the City. The Developer will use its reasonable efforts to cause to be included in the general contractor construction contract(s), and shall post on the Property, a notice that the City is not liable for the payment of any costs associated with the construction of the Public Plaza.

4.3.6 Construction Observation and Inspections. Unless otherwise mutually agreed, the City, or its designee(s), and the Developer, or its designee(s), shall meet monthly during construction of the Public Plaza to discuss and inspect progress and tour the improvements. The City may request the Developer to give the City seven (7) days' advance notice of any construction activity involving underground improvements owned or to be owned by the City. The City shall be allowed to observe such construction activity during a mutually convenient time that will not unreasonably disrupt or interfere with on-going work on the Public Plaza. It is understood and agreed that the observation rights of the City prior to the Leasing Date is for the purpose of protecting the City's interest as tenant under the Lease on or after the Leasing Date.

4.3.7 Substantial Completion of Public Plaza. The Developer shall provide written certification of Substantial Completion to the City. The City shall have fourteen (14) days after receipt of the certification to notify the Developer that it accepts or rejects the segment of the Public Plaza completed by Developer or the segment of the Public Plaza shall be conclusively deemed accepted. In the event of rejection, the City shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. If the dispute cannot be resolved, then it shall be submitted to Dispute Resolution in accordance with Article XVI. In the event that the person or entity presiding over the last step in the Dispute Resolution process, whether by mediation, arbitration or litigation, determines that the Developer "substantially prevails" in the Dispute Resolution, then the Developer shall be entitled to recover its damages relating to any delay in acceptance by the City, together with its reasonable attorneys' fees and costs.

4.3.8 Verification of Actual Costs. The Developer shall deliver to the City at least thirty (30) days prior to the Leasing Dates an accounting of Actual Costs associated with the segment of the Public Plaza being transferred, in a form determined by the Developer in accordance with its standard cost accounting practices. The City shall have fourteen (14) days after receipt of the accounting to approve, deny or request modification of the accounting or the accounting shall be conclusively deemed approved. In the event of administrative denial or request for modification, the City shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. The accounting verification by the City shall not delay the Leasing Dates or payment of the Lease Transfer Amount. In the event that on the Leasing Date there is yet unresolved any issues relating to Actual Costs, then the City shall pay to the Developer the Lease Transfer Amount, less the amounts unresolved, which shall be placed in an interest bearing escrow set aside account with the Escrow Holder. The amount in dispute shall then be submitted to Dispute Resolution in

accordance with Article XVI; provided, however, that in the event that the person or entity presiding over the last step in the Dispute Resolution process, whether by mediation, arbitration or litigation, determines the Developer "substantially prevails" in the accounting dispute, the Developer shall be entitled to immediate disbursement of the escrow set aside, all interest accruing therein, and shall be entitled to recover its reasonable attorneys' fees and costs associated therewith.

4.4 Transfer of Public Plaza and Other Property Interests. On the Leasing Dates described in Section 4.5 below, and upon the payment of the applicable Lease Transfer Amount defined in Section 4.6 below and the delivery of all items to be delivered by the City under Section 4.7 of this Agreement, the Developer agrees to transfer or cause the transfer to the City, or its designee including any Trustee designated by the City, all of Developer's right, title and interest in and to the segment of the Public Plaza being transferred and all of its right, title and interest as landlord under the Leases on the applicable Leasing Date pursuant to a lease purchase agreement executed by and among the Developer as initial landlord, Trustee as successor landlord, and the City as tenant in accordance with the provisions of Chapter 35.42 RCW ("Public Plaza Leases") and this Agreement; provided, however, that the Developer shall have the right, and shall, reserve a perpetual non-exclusive easement and other rights for the benefit of the Property, the Developer, its successors and assigns, and those claiming rights by and through the Developer, its successors and assigns, over, under, through and across the Public Plaza for use, access, ingress, egress, utilities, maintenance, repair and improvement of the Public Plaza and the Property consistent with standards customarily associated with a plaza in a regional open-air shopping center as specified in **Exhibit D** ("Public Plaza Property Interests"). The Public Plaza Lease shall specifically provide that the City shall pay all Closing costs and expenses, including but not limited to, any real estate excise tax, title insurance, escrow and recording fees, associated with the City's subsequent exercise of its right to purchase the Public Plaza Property Interests. The Developer shall have no obligation to pay any Closing costs or expenses associated with the subsequent transaction.

4.5 Leasing Dates. The closing of the transfer of the Public Plaza Property Interests described in Section 4.4 above to the City or its designee including any Trustee ("Closing"), and delivery of all items to be delivered on the Leasing Date under the terms of this Agreement shall be made at the offices of Transnation Title Insurance Company, d/b/a LandAmerica Commercial Services, Seattle Offices, or other nationally recognized title insurance company selected by the Developer and not unreasonably objected to by the City ("Escrow Holder") which shall act as the escrow agent and issue the title insurance policies to be delivered in connection with the Closing. The transfer of the Public Plaza Property Interests shall occur in two separate transfer transactions, one in connection with transfer of the Public Plaza Improvements within the Lower Mall ("Lower Mall Public Plaza Improvements"), and one in connection with transfer of the Public Plaza Improvements within the Upper Mall ("Upper Mall Public Plaza Improvements").

4.5.1 Leasing Date – Lower Mall Public Plaza Property Interests. Closing of the transfer of the Lower Public Plaza Property Interests shall occur on any business day designated the Developer, which business day shall be no earlier than sixty (60) days after issuance of a building permit for a building in the Upper Mall. The business day chosen by the Developer shall be known as the Leasing Date. Such date may be extended by the Developer if additional time is needed to satisfy conditions to Closing.

4.5.2 Leasing Date – Upper Mall Public Plaza Property Interests. Subject to the provisions of Section 4.8.1, Closing of the transfer of the Upper Mall Public Plaza Property Interests shall occur on any business day designated by the Developer, which business day shall be no earlier than sixty (60) days after Substantial Completion of the Upper Mall Public Plaza Improvements. The business day chosen by the Developer shall be known as the Leasing Date. Such date may be extended by the Developer if additional time is needed to satisfy conditions to Closing. The Developer will give the City at least two (2) months prior written notice of the anticipated date of Substantial Completion of the Upper Mall Public Plaza Improvements and the proposed Leasing Date in order to allow the City sufficient time to arrange financing for the Lease Transfer Amount.

4.6 Lease Transfer Amount. The consideration to be paid for the transfer of the Public Plaza Property Interests to the City or its designee is referred to in this Agreement as the "Lease Transfer Amount." Since substantial time is expected to have elapsed from the date of this Agreement until the Leasing Date, the parties recognize and agree that (a) the value of the Public Plaza Property Interests will increase between the date of this Agreement and the Leasing Date, (b) the time value of money should be recognized, (c) the exact date of the Leasing Date is not known at this time, and (e) it is in the best interests of both the Developer and the City to establish the parameters for determining the Lease Transfer Amount in advance in order to avoid future controversies. Accordingly, the Lease Transfer Amount shall be an amount equal to the sum of (i) thirty dollars ($30.00) per square foot for all land included in the Public Plaza; and (ii) the Actual Costs of the Public Plaza Improvements (including, but not limited to, that portion of the Actual Costs of the Public Plaza Improvements associated with City modifications as set forth in Section 4.2, but not credited toward the City Financial Participation). As set forth in Section 4.5, transfer of the Public Plaza Property Interests shall occur in two separate transfer transactions involving the Lower Mall Public Plaza Property Interests and the Upper Mall Public Plaza Property Interests. Except as provided in Section 4.6.1 for a potential escrow holdback account, the Lease Transfer Amount shall be paid on the Leasing Date for the Lower Public Plaza Property Interests, and the balance of the Lease Transfer Amount shall be paid on the Leasing Date for the Upper Public Plaza Property Interests as follows:

4.6.1 Lease Transfer Amount – Lower Mall Public Plaza Property Interests. On the Leasing Date for the Lower Mall Public Plaza Property Interests designated by the Developer in accordance with Section 4.5.1, the City shall pay to the Developer thirty dollars ($30.00) per square foot for all land included in the Lower Mall Public Plaza. Upon the Leasing Date for the Lower Mall Public Plaza Property Interest, the City also shall pay to the Developer a sum equal to one hundred percent (100%) of the Actual Costs of the Lower Mall Public Plaza Improvements; provided, however, that in the event the Developer has less than one hundred sixty thousand square feet (160,000 sq. ft.) of the Lower Mall leased and occupied prior to the Leasing Date, then the City shall pay the Developer seventy-five percent (75%) of the Actual Costs of the Lower Mall Public Plaza Improvements (with the remaining twenty-five percent (25%) of Actual Costs of the Lower Mall Public Plaza Improvements set aside in an interest bearing escrow holdback account with the Escrow Holder for payment to the Developer on the Leasing Date for the Upper Mall Public Plaza Property Interests). Interest accruing on any escrow holdback account shall be for the benefit of the Developer and disbursed in conjunction with Closing of the Upper Mall Public Plaza Property Interests.

4.6.2 Lease Transfer Amount – Upper Mall Public Plaza Property Interests. On the Leasing Date for the Upper Mall Public Plaza Property Interests, the City shall pay to the Developer the entire balance of the Lease Transfer Amount.

4.7 Title to Public Plaza Property Interests. The Developer shall convey title to the Public Plaza to the City or its designee, including any Trustee, on the two Leasing Dates described in Section 4.5 above by executing and delivering the Public Plaza Lease or other form of conveyance which meets the requirements of this Agreement subject to (i) utility and other easements not inconsistent with the use of the Public Plaza for its intended purposes, (ii) all agreements, reservations, covenants, conditions and restrictions of record or which may be imposed on the Public Plaza during the course of construction as a result of permits or other conditions imposed by any governmental authority as a condition to issuing a use permit, building permit or any other license or approval, (iii) any zoning, building, development, land use, health, or other governmental regulations or restrictions contained within statutes, ordinances, laws or regulations applicable to the Public Plaza or general to the area; (iv) the reservation of rights in favor of the Developer and the Property specified in Section 4.11, and the use covenants and restrictions specified in Section 4.12, in the form attached hereto as **Exhibit D**; (v) General Exclusions contained within the title insurance policy to be issued and other matters of record that do not materially impact the use or marketability of the property being transferred; (vi) the Public Plaza Lease and this Agreement; and (vii) any liens, encumbrances, or defects created or incurred by the City after the date of this Agreement (collectively, "Permitted Exceptions"). The Developer shall cause any project lender holding a mortgage or deed of trust on the Property to execute and record a partial reconveyance of such mortgage or deed of trust as to the Public Plaza as of the Leasing Date. The Developer shall cause the Escrow Holder to deliver an irrevocable commitment for an ALTA form standard coverage owner's policy of title insurance with liability in the amount of that portion of the Lease Transfer Amount attributed to the Public Plaza purchase, insuring that upon the Leasing Date the Public Plaza will be vested in City or its designee, including any Trustee, subject only to the Permitted Exceptions, which title insurance policy shall, at the request of the City and at its sole cost and expense, contain an endorsement providing affirmative coverage against construction liens. Assignment of the Public Plaza Lease from the Developer to the Trustee, if applicable, shall be "without recourse" to the Developer, and the City shall agree to forever waive, discharge, and indemnify (including reasonable attorneys' fees and costs) the Developer from any and all claims, demands, liabilities, or causes of action arising out of, or relating to, the Public Plaza Lease after the Leasing Date. The Trust Agreement shall require the Trustee to state in any Certificates of Participation issued or executed by the Trustee that such certificates are issued or executed without recourse to the Developer.

4.8 Payment and Financing of Lease Transfer Amount.

4.8.1 Conditions of Payment. The City's obligations to pay the Lease Transfer Amount on the Leasing Date for the Lower Mall Public Plaza Property Interests and deliver the documents described in Section 4.9 are expressly conditioned on the Developer having obtained a building permit for a building in the Upper Mall. The City's obligations to pay the Lease Transfer Amount on the Leasing Date for the Upper Mall Public Plaza Property Interests and deliver the documents described in Section 4.9 are expressly conditioned on the Developer having 90,000 sq. ft. of the Upper Mall occupied, plus 60,000 sq. ft. of additional space in the

Upper Mall under lease. In the event that on the Leasing Date for the Upper Mall Public Plaza Property Interests the conditions set forth in Section 4.8.1, as applicable to the transaction, have not been satisfied, then the Leasing Date shall be extended to a date which is seven (7) days after the satisfaction of this condition.

4.8.2 Obligation to Make Payment. The City's obligation to provide for payment of the Lease Transfer Amount on the Leasing Dates is not conditioned on the execution and delivery of Certificates of Participation or other tax exempt or taxable obligations regardless of interest rate, and in the event the City is unable to issue Certificates of Participation or is unable or elects not to issue other tax exempt obligations, the City shall nevertheless be obligated to pay, or cause to be paid to the Developer, the Lease Transfer Amount in cash or other immediately available funds on the Leasing Dates.

4.8.3 Tax Exempt Obligations. Not later than the Leasing Dates, the City intends to finance its acquisition of the Public Plaza Property Interests by causing the execution and delivery of tax exempt Certificates of Participation or the issuance of other tax exempt obligations in an amount sufficient to cause the payment to the Developer of the full Lease Transfer Amount. The City represents and warrants to the Developer that as of the effective date of this Agreement it has sufficient debt capacity under existing Washington law ("Debt Capacity") to permit the principal component of the Certificates of Participation or other obligations to equal the Lease Transfer Amount. The City agrees that it will not incur any indebtedness or lease obligations from and after the date of this Agreement which would cause it not to have sufficient Debt Capacity under Washington law to permit the principal component of the Certificates of Participation or other obligations to at least equal the Lease Transfer Amount the City has represented to the Developer that it intends to pay, or cause to be paid, the Lease Transfer Amount to the Developer in connection with the acquisition or transfer of the Public Plaza Property Interests on the Leasing Dates with the proceeds from the sale of Certificates of Participation in the Lease, and the Developer has relied on this representation in entering into this Agreement. In the event the City is unable to cause the execution and delivery of Certificates of Participation or the issuance of other obligations to finance the acquisition of the Public Plaza Property Interests, the City shall nevertheless be obligated to pay the Lease Transfer Amount on the Leasing Dates as provided in Section 4.6 of this Agreement. The City shall pay, or cause the payment of, any and all financing or other costs in connection with the issuance of the Certificates of Participation or other obligations.

4.8.4 Alternative Conveyance. In the event the City, consistent with its obligations under this Agreement, does not lease the Public Plaza through a lease purchase agreement or does not cause the execution and delivery of the Certificates of Participation, the parties understand that all references to the Public Plaza Lease and the Certificates of Participation shall have no further force and effect and the Developer shall convey the Public Plaza Property Interests to the City pursuant to a special warranty deed which meets the requirements of this Agreement and the City shall pay the Developer the Lease Transfer Amount in cash or other immediately available funds on the Leasing Dates.

4.9 **Closing.** On or before the Leasing Dates, the Parties shall deposit with the Escrow Holder the following:

4.9.1 Delivery by the Developer. The Developer shall deliver, on each of the Leasing Dates, and as applicable to the contemplated transaction, the following documents:

(a) The applicable Public Plaza Lease, Memorandum of Lease for recording, and a special warranty deed to the land and fixture improvements constituting that portion of the Public Plaza being transferred, which meets the requirements of this Agreement, executed in recordable form and ready for recording on the Leasing Date, together with an executed real estate excise tax affidavit prepared by the Escrow Holder. In the event of a lease arrangement, only the Memorandum of Lease shall be recorded by the Escrow Holder. The special warranty deed shall be delivered to the City or the City's designee, as instructed by the City.

(b) The Declaration of Easements, Covenants, Conditions and Restrictions, containing the items set forth in **Exhibit D** to this Agreement, executed in recordable form and ready for recording on the Leasing Date.

(c) Evidence reasonably satisfactory to the City that the segment of the Public Plaza being transferred is free and clear of all liens arising by or through the actions of the Developer, its contractors, subscontractors or their respective agents and employees, other than Permitted Exceptions; provided, however, that if the title insurance policy to be issued in conjunction with Closing of the segment of the Public Plaza being transferred contains an endorsement protecting against said liens, then no further evidence shall be required.

(d) Certification that the Developer is not a 'foreign person' within the meaning of the Foreign Investment In Real Property Tax Act.

(e) Evidence reasonably satisfactory to City that the conditions precedent set forth in Section 4.8.1, as applicable, have been satisfied prior to transfer of the Lower Mall Public Plaza Property Interests or the Upper Mall Public Plaza Property Interests.

(f) Evidence that all original warranties which the Developer has received in connection with the construction of the Public Plaza (to the extent assignable and to the extent such warranties have not expired in accordance with their terms), together with a duly executed assignment of warranties in a form reasonably satisfactory to the City or its designee, as applicable, have been delivered and assigned, as applicable.

(g) Any partial reconveyance documents required to eliminate of record any existing mortgages or deeds of trust which are not Permitted Exceptions as hereinabove defined and, if applicable, any affidavit required in conjunction with the title company endorsement providing affirmative coverage against construction liens and the rights of parties in possession.

(h) A copy of the "as built" plans and specifications for the segment of the Public Plaza being transferred.

(i) An irrevocable commitment from the Title Company to issue the City or its designee an ALTA owner's standard coverage title insurance policy in form and substance reasonably satisfactory to the City showing fee simple title to the segment of the Public Plaza being transferred vested in the City or its designee, including the Trustee if the City issues Certificates of Participation, subject only to the Permitted Exceptions, which title insurance policy, upon request of the City at its sole cost and expense, shall contain an endorsement providing affirmative coverage against construction liens. At the request of the City, all or any portion of the owner's policy of title insurance shall be reinsured under reinsurance agreements and with reinsurers reasonably satisfactory to City, and the cost of such reinsurance, if any, shall be paid by the City.

(j) In the event the Developer has transferred all or any portion of its interest under this Agreement, either voluntarily or involuntarily, an assumption agreement satisfactory in form and substance to the City under which such transferee shall assume such rights, duties and obligations under this Agreement as the Developer may have assigned, transferred, or delegated to such transferee.

(k) Such resolutions, certificates or other documents as shall be reasonably required by the Escrow Holder in connection with Closing the City's acquisition of the segment of the Public Plaza being transferred.

(l) Any other documents, instruments, data, records or other agreements called for herein which have not been previously delivered.

4.9.2 Delivery by the City. The City shall deliver, or cause to be delivered, on each of the Leasing Dates, and as applicable to the contemplated transaction, the following documents:

(a) The applicable Lease Transfer Amount, in cash or other immediately available funds, for the segment of the Public Plaza being transferred.

(b) The Public Plaza Lease and Memorandum of Lease, together with the real estate excise tax affidavit prepared by the Escrow Holder, duly executed and acknowledged by the City and Trustee.

(c) Copies of any Trust Agreement or other documentation executed by Trustee or others necessary to cause the execution and delivery of the Certificates of Participation and the Public Plaza Lease by the Trustee or the City's designee on or before the Leasing Date.

(d) Such ordinances, authorizations, certificates or other documents or agreements relating to the City, or the City's designee or Trustee, as shall be reasonably required by the Escrow Holder in connection with closing the City's acquisition of the Public Plaza segment being transferred.

(e) Any other documents, instruments, data, records, or other agreements called for herein which have not been previously delivered.

4.9.3 Other Instruments. The Developer, the City, and the City's designee or Trustee, if applicable, shall each deposit such other instruments as may be reasonably required by Escrow Holder or as may be otherwise required to close the escrow and consummate the acquisition of the Public Plaza Property Interests in accordance with the terms hereof.

4.9.4 Prorations. All ownership, use, operation and maintenance expenses associated with the Public Plaza, including, but not limited to, real and personal property taxes, special and other assessments, annual permits and/or inspection fees (calculated on the basis of the respective periods covered thereby), and other expenses shall be prorated as of 12:01 a.m. on the Leasing Date so that the Developer bears all expenses of the transferred segment of the Public Plaza prior to the Leasing Date and City bears all expenses of the transferred segment of the Public Plaza on and after the Leasing Date. Under current Washington law, the City is exempt from payment of certain real and personal property taxes. In the event the City is exempt from payment of certain real and personal property taxes under Washington law on the Leasing Date, the City shall not be responsible for payment of the same on and after the Leasing Date. The Developer may seek reimbursement from the taxing authorities to whom the Developer may have paid any such real or personal property tax that is allocable to any period of time after the Leasing Date and the City shall cooperate with and make all reasonable efforts to assist the Developer in securing such reimbursement. If any revenue or expense amount cannot be ascertained with certainty as of the Leasing Date, it shall be prorated on the basis of the parties' reasonable estimates of such amounts, and shall be the subject of a final proration sixty (60) days after Closing or as soon thereafter as the precise amounts can be ascertained. Either party owing the other party a sum of money based on adjustments made to the prorations after the Leasing Date shall promptly pay that sum together with interest thereon at the rate of nine percent (9%) per annum from the date of demand therefor to the date of payment if payment is not made within thirty (30) days after the delivery of a statement therefor.

4.9.5 Closing Costs and Expenses. The City shall pay all costs and expenses associated with (1) any real estate excise tax associated with the Public Plaza Lease or other transfer of the Public Plaza Property Interests; (2) any extended title insurance policy or any requested reinsurance or endorsements (and survey or other costs associated therewith); and (3) execution and delivery of the Certificates of Participation or other City obligations incurred to finance the acquisition or transfer of the Public Plaza Property Interests pursuant to the City's financial arrangements. The Developer shall pay the cost and expense associated with the City's ALTA owner's standard coverage title insurance policy. The Developer and the City shall each pay one-half (1/2) of the standard costs and expenses associated with escrow and recording fees. In the event that Closing involves a Public Plaza Lease, the Parties understand and agree that the Developer shall not be obligated to pay any Closing or other costs and expenses associated with a subsequent transaction whereby the City exercises its right to purchase the Public Plaza Property Interests. In the event that the Actual Costs for the combined Public Plaza Improvements and 120th Avenue NE Improvements is less than $7,300,000.00 (excluding land value and the costs of any changes or additions requested by the City pursuant to Section 4.2 or Section 6.2), then the City shall receive credit toward the City's Financial Participation for all, or a portion of, the real estate excise tax paid in an amount up to, but not to exceed, the differential between the Actual Costs of these improvements as described above and $7,300,000.00.

4.9.6 Close of Escrow; Recording. On the Leasing Dates, the Escrow Holder shall disburse the Lease Transfer Amount to the Developer and shall record the documents described in Sections 4.9.1(a), (g) and (j), as applicable, and 4.9.2(b) and (e), as applicable, in the real property records of King County, Washington, and deliver the other documents described in Sections 4.9.1, 4.9.2 and 4.9.3. The Escrow Holder shall deliver copies of all documents executed, delivered and/or recorded in connection with this transaction to the Developer, any project lender(s), the City, the City's designee or Trustee, if any, as applicable, together with closing statements in form customarily prepared by Escrow Holder within five (5) days following the Leasing Date.

4.10 Maintenance of the Public Plaza.

4.10.1 Maintenance by Developer. For a period of twenty-five (25) years from the Leasing Date of the Lower Mall Public Plaza Property Interests, the Developer shall, at its sole cost and expense, maintain the Public Plaza, except for the public streets and roadways therein as defined in Section 4.10.2, at the standards observed by owners of first-class urban regional open-air shopping malls for plazas within such facilities. All sidewalks, walkways, and other pedestrian surfaces shall be kept and maintained in a good, safe and clean condition. Snow, ice, surface water, debris, filth, and refuse shall be removed as soon as reasonably practicable. Street lights shall be promptly replaced when necessary. Routine maintenance and replacement shall be provided to all furnishings including benches, garbage receptacles, landscaping containers, fountains and artwork. Grass shall be periodically mowed. All areas shall be kept clean and free from graffiti, and any graffiti shall be removed and the surface restored to its condition prior to the application of the graffiti as part of routine maintenance. All landscaping shall be maintained, irrigated, and replaced, irrigation systems shall be kept in good repair and plantings shall be maintained. The maintenance responsibility of the Developer is limited to routine maintenance. In the event that the Developer conducts any public events on the Public Plaza, the Developer shall be responsible, at its sole cost and expense, for all maintenance and repairs, consistent with the requirements of this Section, associated therewith. In the event that the Developer obtains a Commercial General Liability insurance policy covering the Public Plaza, the Developer shall name the City as an "additional insured" to the extent of claims arising out of, or relating to, the Public Plaza maintenance obligations of the Developer.

4.10.2 Maintenance by City. The City shall maintain all public streets and roadways within the Public Plaza in accordance with its applicable standards for maintaining City streets and roadways in retail and commercial areas of the City. For purposes of this Section, the term "streets and roadways" shall mean all traffic and directional signalization and signage and the surface of and facilities beneath the pavement or traveling surface for motor vehicles, from curb to curb (including the curbs), and shall not include median areas. The City shall be solely responsible for all costs and expenses associated with maintenance of the public streets and roadways, and all non-routine costs of repairs, replacements and improvements to the Public Plaza. In the event that the City authorizes, approves or conducts any public events on the Public Plaza, the City shall be responsible, at its sole cost and expense, for all maintenance and repairs, consistent with the requirements of this Section associated therewith.

4.11 Maintenance Dispute Resolution. In the event that either Party concludes that the other Party has failed to maintain, repair, replace or improve the Public Plaza in accordance with this Agreement, then the matter shall be submitted for resolution consistent with the Dispute Resolution provisions of Article XVI.

4.12 Use of Public Plaza. Consistent with acquisition as a public space, the City and the general public shall have use of the Public Plaza, subject to reasonable easements, use covenants, conditions and restrictions set forth in **Exhibit D** attached hereto. The Public Plaza will remain public property, available for the exercise of free speech rights of citizens. The City reserves the right to sponsor up to twelve (12) events on the Public Plaza each year, and the Developer reserves the right to sponsor up to twelve (12) events on the Public Plaza each year. Unless otherwise mutually agreed between the City and the Developer, no more than twenty-four (24) events will be held annually on the Public Plaza and no more than one event shall be held on any given day. Notwithstanding anything to the contrary, sidewalk sales, signage, displays and similar activities by the Developer, or its tenants, adjacent to retail spaces adjoining the Public Plaza and consistent with **Exhibit D** shall be permitted without regard to Chapters 19.24 and 19.04 KMC, and shall not be deemed events for purposes of this Section 4.12. City sponsored events shall conform generally to the requirements of Chapter 19.24 KMC, as may be amended, replaced or modified from time-to-time. However, the Developer sponsored events shall not be required to comply with the provisions of Chapter 19.24 KMC, as may be amended, replaced or modified from time-to-time. The City and the Developer shall each designate one representative from time-to-time to serve as the Party's liaison with regard to matters involving the Public Plaza. These liaisons shall meet as deemed necessary to address any issues associated with the Public Plaza, including, but not limited to, maintenance and coordination of events on the Public Plaza consistent with this Agreement. Event scheduling shall require the written concurrence of each Party's liaison to avoid any potential conflicts. Prior to the end of a calendar year, the liaisons shall endeavor to prepare a preliminary schedule of events for the next calendar year. As a general policy, events on the Public Plaza should be scheduled at least one hundred twenty (120) days before the event. The Developer shall have priority for scheduling events during November and December, and the City shall have priority for scheduling events during July and August. Any disputes between the Parties with regard to use of the Public Plaza shall be submitted for resolution consistent with the Dispute Resolution provisions of Article XVI.

4.13 Transfer of Public Plaza Property Interests. The Parties understand and agree that the Public Plaza is strategically located within the Mall, and, even though it will be owned, operated, and used as a public amenity, the Developer has an interest in ensuring that future use is consistent with this Agreement for as long as the Property is used as a shopping mall. The City shall not convey, lease or otherwise transfer the Public Plaza Property Interests, in whole or in part, whether voluntarily or involuntarily, to any person, entity or municipality other than (1) a governmental entity or municipality for public plaza purposes consistent with this Agreement; or (2) the Developer, or its successors or assigns; or (3) to any other person or entity, subject to the prior written consent of the Developer, or its successors or assigns, which consent may be granted or withheld at the sole discretion of the Developer, or its successors or assigns (collectively, the "Permitted Transferees"). The City shall ensure that any subsequent conveyance, lease or other transfer of the Public Plaza Property Interests, in whole or in part, require the assumption by the Permitted Transferee of all obligations of the City under this Agreement. The Developer shall have the right to impose upon the Public Plaza property

Interests, when transferred to the Trustee or the City, a deed restriction that restricts use of the Public Plaza to public plaza and roadway purposes consistent with this Agreement for as long as the Property is used as a shopping mall, and that limits conveyance to the persons, entities or municipalities described in this Section 4.13.

ARTICLE V
PARKING GARAGE

5.1 Preparation of Parking Garage Plans and Specifications and Approvals Associated with the Parking Garage.

5.1.1 Parking Garage Plans and Specifications. The Project Plan includes a Parking Garage to be built by the Developer in the Upper Mall, which is currently anticipated to include six (6) stories of parking with approximately nineteen hundred (1,900) parking spaces. The Parking Garage shall be designed to standards for vehicular access and circulation, lighting, safety, ease of maintenance, energy efficiency and attractiveness that are consistent with standards for similarly situated parking garages associated with regional open-air shopping centers in the Pacific Northwest. The Developer shall prepare plans and specifications for the Parking Garage in accordance with this Agreement ("Parking Garage Plans and Specifications").

5.1.2 Administrative Approval of Parking Garage Plans and Specifications. The Developer shall use reasonable efforts to coordinate input from the City, and provide an opportunity for the City to review and comment on the proposed Parking Garage Plans and Specifications prior to formal submission for administrative approval. The Developer shall submit the proposed Parking Garage Plans and Specifications to the City for administrative review and approval by the City Planning Director. The administrative review shall be for the purpose of determining if the Parking Garage will function appropriately for the City's public parking needs and will be consistent with this Agreement; provided, however, that City administrative approval of the Parking Garage Plans and Specifications shall not be construed to subject the City to any liability to the Developer or any third party for defects in design. The City Planning Director shall issue his administrative decision approving, denying or requesting modification to the Parking Garage Plans and Specifications within twenty-one (21) days after submission or the Parking Garage Plans and Specifications shall be conclusively deemed approved. In the event of administrative denial or request for modification, the City Planning Director shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. The Developer and the City must approve the Parking Garage Plans and Specifications and, in the event of a dispute, the Dispute Resolution procedures set forth in Article XVI shall apply.

5.2 Parking Garage Construction.

5.2.1 Responsibilities of the Developer. Subject to the terms of this Agreement, the Developer shall design, finance and construct the Parking Garage at its sole cost and expense, including any loans that the Developer may deem necessary to carry out construction. Construction of the Parking Garage shall be carried out by the Developer as part of a single work, construction and improvement comprising the Project, including both private portions (approximately 90% of the Parking Garage and 95% of the Project overall) and the City Garage

Unit (approximately 10% of the Parking Garage and 5% of the Project overall) to be leased or otherwise acquired by the City. No part of the cost of construction of the Parking Garage shall ever become an obligation of the City. The City shall not be liable for any work performed or to be performed on the Parking Garage for the Developer or for any materials, supplies or equipment furnished or to be furnished to the Developer, and no construction or other liens for such labor, services, materials, supplies or equipment shall attach to any property owned by the City. The Developer will use its reasonable best efforts to cause to be included in the general contractor construction contract(s), and shall post on the Property, a notice that the City is not liable for the payment of any costs associated with the construction of the Parking Garage.

5.2.2 Compliance with Laws. The Parking Garage shall be built in compliance with all applicable building code and other laws, rules and regulations, including but not limited to the applicable provisions of Title III of the Americans With Disabilities Act and the regulations issued thereunder by the United States Department of Justice concerning accessibility of places of public accommodation. The Parties recognize, however, that because the City Garage Unit is being leased to the City pursuant to Chapter 35.42 RCW, construction of the City Garage Unit is not a "public work" or otherwise subject to competitive or public bidding or payment of prevailing wages requirements, and that because the City Garage Unit constitutes less than 50% of the Project, these improvements are not subject to prevailing wage requirements. Accordingly, the Developer shall not be deemed in breach of this Agreement based upon non-compliance with any laws, rules or regulations relating thereto.

5.2.3 Permits. The Developer shall obtain all permits and authorizations from any federal, state or local government or departments or subdivisions thereof having jurisdiction in order to permit construction of the Parking Garage. The City will process applications for permits and approvals as if such applications were made without any City participation in such project.

5.2.4 Construction Warranty. The Developer's general contractor, pursuant to the construction contract(s) for the Parking Garage, or the Developer, at the option of the Developer, shall for one (1) year after Substantial Completion of the Parking Garage by the Developer, correct and repair any material defects appearing or developing in the workmanship or materials furnished in respect to the Parking Garage. If the Developer transfers the City Garage Unit to the City within the one (1) year period, and the Developer's general contractor is responsible for the one (1) year warranty, the Developer shall provide an assignment of the warranty with respect to the City Garage Unit in a form reasonably satisfactory to the City for the remainder of the one (1) year period.

5.2.5 Construction Observation and Inspections. Unless otherwise mutually agreed, in the event that the City wishes to inspect or conduct a site visit, the City shall contact the Developer, or its designee(s), to arrange a mutually convenient time that will not unreasonably disrupt or interfere with on-going work on the Parking Garage. The City shall have no other authority to supervise, oversee, or otherwise direct the design or the construction of the Parking Garage. It is understood and agreed that any inspection of the Parking Garage by the City prior to the Leasing Date is for the sole purpose of protecting the City's interest as tenant under the Parking Garage Lease on or after the Leasing Date.

5.2.6 Substantial Completion of Parking Garage. The Developer shall provide written certification of Substantial Completion of the Parking Garage to the City. The City shall have fourteen (14) days after receipt of the certification to notify the Developer in writing that it approves issuance, or refuses to approve issuance, of a certificate of occupancy for the Parking Garage or the Parking Garage shall be conclusively deemed to have received a certificate of occupancy. In the event of administrative refusal to issue a certificate of occupancy for the Parking Garage, the City shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. If the dispute cannot be resolved, then it shall be submitted to Dispute Resolution in accordance with Article XVI. In the event that the person or entity presiding over the last step in the Dispute Resolution process, whether by mediation, arbitration or litigation, determines that the Developer "substantially prevails" in the Dispute Resolution, then the Developer shall be entitled to recover its damages relating to any delay in issuance of a temporary certificate of occupancy or certificate of use, together with its reasonable attorneys' fees and costs.

5.2.7 Verification of Actual Costs. The Developer shall deliver to the City at least thirty (30) days prior to the Leasing Date an accounting of Actual Costs associated with the Parking Garage, in a form determined by the Developer in accordance with its standard cost accounting practices. The City shall have fourteen (14) days after receipt of the accounting to approve, deny or request modification of the accounting or the accounting shall be conclusively deemed approved. In the event of City denial or request for modification, the City shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. The accounting verification by the City shall not delay the Leasing Date or payment of the Lease Transfer Amount. In the event that on the Leasing Date there is yet unresolved any issues relating to Actual Costs, then the City shall pay to the Developer the Lease Transfer Amount, less the amounts unresolved, which shall be placed in an interest bearing escrow set aside account with the Escrow Holder. The amount in dispute shall then be submitted to Dispute Resolution in accordance with Article XVI; provided, however, that in the event that the person or entity presiding over the last step in the Dispute Resolution process, whether by mediation, arbitration or litigation, determines that the Developer "substantially prevails" in the accounting dispute, the Developer shall be entitled to immediate disbursement of the escrow set aside, interest accrued therein, and shall be entitled to recover its reasonable attorneys' fees and costs associated therewith.

5.3 Parking Garage Condominium. Prior to, or upon Substantial Completion of the Parking Garage, the Developer shall cause the Parking Garage to be divided into two (2) or more condominium units, including the City Garage Unit. The form of the Declaration shall be mutually acceptable to the City and the Developer. The Declaration shall include all statutory requirements for creation of a Condominium under Washington law, Chapter 64.34 RCW. The Survey Map and Plans shall include, among other required elements, identification of the boundaries of each condominium unit, the common elements and the limited common elements assigned to each condominium unit. The Declaration shall contain all elements required by Washington law, including, but not limited to, the following: (1) such easements, covenants, rights, restrictions, and other provisions as are customarily associated with a parking structure condominium including, but not limited to cross-easements for access, maintenance and structural support (including, but not limited to, cross-easements, maintenance and structural support for structures anticipated for the site, such as the office building, but not included within

the Parking Garage Condominium); (2) allocation of condominium unit interests and a formula for establishing weighted voting rights, requirements and allocations based upon percentage ownership interests in the Parking Garage Condominium; (3) allocation of shared maintenance, repair and improvement costs and expenses; (4) a dispute resolution process; (5) Association governance provisions; (6) insurance requirements and responsibilities; and (7) other rights and responsibilities typically included in a parking structure condominium. The Developer shall ensure that the owners of condominium units within the Parking Garage have a non-exclusive access easement over, through and across those portions of the Property and the Parking Garage that are necessary for ingress and egress to the Parking Garage for its intended purpose. The City Garage Unit shall not include any fee or other title to the land under the Parking Garage (exclusive of improvements). The location of the City Garage Unit shall be selected by the Developer, at its discretion, but shall be located on the second floor of the Parking Garage and shall be designed, constructed, equipped and maintained to the same standards and level of quality as the other Parking Garage condominium unit(s). Elevator and stair service to the floor containing the City Garage Unit shall be equivalent to such service to the other floors of the Parking Garage.

5.4 Operation of the Parking Garage Condominium. The Developer shall cause the Parking Garage to be subject to the Declaration (including Survey Map and Plans). Formation and operation of the Parking Garage Condominium shall be in accordance with the Declaration. The rights and duties of the board, the owners of condominium units and of the Association shall be governed by the provisions of the Declaration. The Association shall be governed by a board as specified in the Declaration, which board shall have the number of members, or range of possible members, designated therein; provided, however, that the board shall include one (1) representative of the City as owner of the City Garage Unit, and one (1) representative for each owner of a condominium unit subject to the Declaration. The voting rights of each board member shall be weighted based upon the respective percentage ownership interest of each condominium unit in the Parking Garage Condominium. However, City consent shall be required for any board decision resulting in (1) any Association expenditure for non-routine maintenance, repair or improvement to the Parking Garage that would require a contribution of the City in excess of $50,000, unless such non-routine maintenance, repair or improvement is necessitated by any requirement imposed by the City or other governmental agency, emergency or threat to the structural integrity of the Parking Garage; (2) any Association decision that would prohibit access by the general public to the City Garage Unit during any portion of a twenty-four (24) hour day; provided, however, that consent shall not be required if the limitation on access is due to maintenance, repair or improvement of the Parking Garage; and (3) any Association decision that would require the City or the Association to charge a fee for public parking in the City Garage Unit. The board shall at all times act on behalf of the Association and shall specifically have the power and authority, but not the obligation, to delegate by contract its rights and obligations under the Declaration to the Developer, its successors or assigns, or to an experienced parking garage management entity. Additional use restrictions and/or limitations shall be contained within the Declaration. The Declaration shall provide that the Parking Garage shall be operated and open for public parking twenty-four (24) hours per day, unless otherwise decided by the board. The Declaration shall also provide that all parking within the Parking Garage shall be free of periodic (hourly, daily, monthly, etc.) parking charges or fees, unless and until such time as the board of the Association determines that all, or a certain portion, of available parking within the Parking Garage shall be available for paid

parking. In the event, however, that the board determines that all, or a portion of, the Parking Garage will be made available for paid parking, the City Garage Unit shall be included in any portion of the Parking Garage where paid parking is permitted, unless the City refuses to grant consent for paid parking within the City Garage Unit. In the event of paid parking, all net parking revenues, after deduction of operating costs and expenses, shall accrue to the benefit of the condominium owners permitting paid parking. Each condominium owner shall be entitled to that portion of net parking revenues attributable to the use of its condominium unit; provided, however, that if the entire Parking Garage is available for paid parking, then the Association shall have the right to collect and apportion net parking revenues to the condominium owners in accordance with their respective percentage ownership in the Parking Garage Condominium.

5.5 City Garage Unit. The floor space comprising the City Garage Unit shall be equal to a percentage of the overall floor space in the Parking Garage. The percentage of floor space within the City Garage Unit shall be approximately equal to the percentage of the Actual Costs of the Parking Garage represented by the Lease Transfer Amount. For illustration purposes only, if the Lease Transfer Amount equals ten percent (10%) of the Actual Costs of the Parking Garage, then the City Garage Unit will include ten percent (10%) of the overall floor space in the Parking Garage and approximately ten percent (10%) of the parking stalls. The percentage of parking stalls comprising the City Garage Unit that are for disabled persons and compact vehicles shall be approximately the same percentage as in the other Parking Garage condominium unit(s). The City Garage Unit shall constitute a separate and distinct project from the private segments of the Project and from the Public Plaza and the 120th Avenue NE Improvements.

5.6 Transfer of City Garage Unit Property Interests. Except as may be otherwise provided in this Agreement, the Developer agrees to lease to the City and the City agrees to lease from the Developer the City Garage Unit on the Leasing Date pursuant to a twenty-five (25) year lease, in the form attached hereto as **Exhibit F,** executed by and among the Developer as the initial landlord, the Trustee as successor landlord, and the City as tenant, in accordance with the provisions of Chapter 35.42.010-.090 RCW ("City Garage Unit Lease"). On the Leasing Date described in Section 5.7, and upon payment of the Lease Transfer Amount defined in Section 5.8 and delivery of all items to be delivered by the City under Section 5.11, the Developer agrees to transfer or cause the transfer to the City, or its designee including any Trustee designated by the City, all of Developer's right, title and interest in and to the City Garage Unit, and any non-exclusive access easement(s) over, through and across those portions of the Property and the Parking Garage that are necessary for ingress and egress to the Parking Garage for its intended purpose, and all of its right, title and interest as landlord pursuant to the City Garage Unit Lease (collectively, the "City Garage Unit Property Interests"). The City Garage Unit Lease shall provide for rental payments in such amounts as shall be mutually acceptable to the Developer, the Trustee as the successor landlord under the City Garage Unit Lease, and the City as tenant, all acting reasonably. The City Garage Unit Lease shall also provide the City, as tenant, with an option to purchase the City Garage Unit and shall provide that all rental payments or other sums paid as rent up to the time of exercising the option shall be credited against the purchase price as of the date of purchase. The City Garage Unit Lease shall not provide, nor shall it be construed to provide, that the City shall be under any obligation to purchase the Parking Garage Unit (although such provision shall not be construed to imply that the City is not obligated to provide for the payment of the Lease Transfer Amount as set forth in this Agreement). The City Garage

Unit Lease shall specifically provide that the City shall pay all Closing costs and expenses, including but not limited to, any real estate excise tax, title insurance, escrow and recording fees, associated with the City's subsequent exercise of its right to purchase the City Garage Unit Property Interests. The Developer shall have no obligation to pay any Closing costs or expenses associated with the subsequent transaction.

5.7 Leasing Date. Subject to the provisions of Section 5.10.1, the closing of the transfer of the City Garage Unit Property Interests to the City, or its designee including any Trustee ("Closing"), and delivery of all items to be to be made on the Leasing Date under the terms of this Agreement shall be made at the offices of Transnation Title Insurance Company, d/b/a LandAmerica Commercial Services, Seattle Office, or other nationally recognized title insurance company selected by the Developer and not objected to by City ("Escrow Holder") which shall act as the escrow agent and issue the title insurance policies to be delivered in connection with the Closing on any business day designated the Developer, which business day shall be no earlier than sixty (60) days after Substantial Completion of the Parking Garage; provided, however, that the Leasing Date shall be the same date as the Leasing Date for the Upper Mall Property Interests as set forth in Section 4.5.2. The business day chosen by the Developer shall be known as the Leasing Date. Such date may be extended by the Developer if additional time is needed to satisfy conditions to Closing. The Developer will give the City at least two (2) months prior written notice of the anticipated date of Substantial Completion of the Parking Garage and the proposed Leasing Date in order to allow the City sufficient time to arrange financing for the Lease Transfer Amount. Consistent with 35.42.060 RCW, the City Garage Unit Lease, and the City's obligation to pay rent thereunder, shall not be effective until the Substantial Completion of the City Garage Unit.

5.8 Lease Transfer Amount. The consideration to be paid for the transfer of the City Garage Unit Property Interests to the City, or its designee, is referred to in this Agreement as the "Lease Transfer Amount." Since substantial time is expected to have elapsed from the date of this Agreement until the Leasing Date, the parties recognize and agree that (a) the value of the City Garage Property Interests will increase between the date of this Agreement and the Leasing Date, (b) the time value of money should be recognized, (c) the exact date of the Leasing Date is not known at this time, (e) the actual City Garage Property Interests has not been determined with specificity at the time of this Agreement; and (f) it is in the best interests of both the Developer and City to establish the parameters for determining the Lease Transfer Amount in advance in order to avoid future controversies. Accordingly, the Lease Transfer Amount shall be an amount equal to the residual balance of the City's Financial Participation of $15,000,000.00 after deduction of all expenditures made by the City for other Components of City Financial Participation set forth in Article VIII herein.

5.9 Title to City Garage Unit Property Interests. The Developer shall convey title to the City Garage Unit to the City or its designee, including any Trustee, on the Leasing Date by executing and delivering the City Garage Unit Lease or other form of conveyance which meets the requirements of this Agreement subject to (i) this Agreement and the Declaration, Survey Map and Plans, (ii) utility and other easements not inconsistent with the use of the Parking Garage for its intended purposes, (iii) all agreements, reservations, covenants, conditions and restrictions of record or which may be imposed on the Parking Garage during the course of construction as a result of permits or other conditions imposed by any governmental authority as

a condition to issues a use permit, building permit or any other license or approval; (iv) any zoning, building, development, land use, health, or other governmental regulations or restrictions contained within statutes, ordinances, laws or regulations applicable to the Parking Garage or general to the area; (v) General Exclusions contained within the title insurance policy to be issued and other matters of record that do not materially impact the use or marketability of the property being transferred; (vi) any liens, encumbrances, or defects created or incurred by the City after the date of this Agreement; and (vii) the City Garage Unit Lease (collectively "Permitted Exceptions"). The Developer shall cause any project lender holding a mortgage or deed of trust on the Property to execute and record a partial reconveyance of such mortgage or deed of trust as to the City Garage Unit as of the Leasing Date. The Developer shall cause the Escrow Holder to deliver an irrevocable commitment for an ALTA form standard coverage owner's policy of title insurance with liability in the amount of the Lease Transfer Amount insuring that upon the Leasing Date the City Garage Unit will be vested in City or its designee, including any Trustee, subject only to the Permitted Exceptions, and, if requested by the City at its sole cost and expense, containing an endorsement providing affirmative coverage against construction liens. Assignment of the City Garage Unit Lease from the Developer to the Trustee, if applicable, shall be "without recourse" to the Developer, and the City shall agree to forever waive, discharge, and indemnify (including reasonable attorneys' fees and costs) the Developer from any and all claims, demands, liabilities or causes of action arising out of, or relating to, the City Garage Unit Lease after the Leasing Date. The Trust Agreement shall require the Trustee to state in any Certificates of Participation issued or executed by the Trustee that such certificates are issued or executed without recourse to the Developer.

5.10 <u>Payment and Financing of Lease Transfer Amount</u>.

5.10.1 The City's obligations to pay the Lease Transfer Amount for the City Garage Unit on the Leasing Date, and deliver the documents described in Section 5.11, are expressly conditioned on the Developer having 90,000 sq. ft. of the Upper Mall occupied, plus 60,000 sq. ft. of additional space in the Upper Mall under lease. In the event that on the Leasing Date for the City Garage Unit this condition has not been satisfied, then the Leasing Date shall be extended to a date which is seven (7) days after the satisfaction of this condition.

5.10.2 The City's obligations to provide for payment of the Lease Transfer Amount on the Leasing Date is not conditioned on the execution and delivery of Certificates of Participation or other tax exempt or taxable obligations regardless of interest rate, and in the event City is unable to issue Certificates of Participation or is unable or elects not to issue other tax exempt obligations, City shall nevertheless be obligated to pay, or cause to be paid to the Developer, the Lease Transfer Amount in cash or other immediately available funds on the Leasing Date.

5.10.3 Not later than the Leasing Date, the City intends to finance its acquisition of the City Garage Unit Property Interests by causing the execution and delivery of tax exempt Certificates of Participation or the issuance of other tax exempt obligations in an amount sufficient to cause the payment to the Developer of the full Lease Transfer Amount. The City represents and warrants to the Developer that as of the date hereof it has sufficient debt capacity under existing Washington law ("Debt Capacity") to permit the principal component of the Certificates of Participation or other obligations to equal the Lease Transfer Amount. The City

agrees that it will not incur any indebtedness or lease obligations from and after the date of this Agreement which would cause it not to have sufficient Debt Capacity under Washington law to permit the principal component of the Certificates of Participation or other obligations to at least equal the Lease Transfer Amount the City has represented to the Developer that it intends to pay, or cause to be paid, the Lease Transfer Amount to the Developer in connection with the acquisition or transfer of the City Garage Unit Property Interests on the Leasing Date with the proceeds from the sale of Certificates of Participation in the Lease, and the Developer has relied on this representation in entering into this Agreement. The Developer understands that the City intends to provide for the payment of the Lease Transfer Amount with the proceeds from the sale of tax exempt Certificates of Participation or other tax exempt obligations. In the event the City is unable to cause the execution and delivery of Certificates of Participation or the issuance of other obligations to finance the acquisition of the City Garage Unit Property Interests, the City shall nevertheless be obligated to pay the Lease Transfer Amount on the Leasing Date as provided in Section 5.6 of this Agreement. The City shall pay, or cause the payment of, any and all financing costs or other expenses in connection with the issuance of the Certificates of Participation or other obligations.

5.10.4 In the event the City, consistent with its obligations under this Agreement, does not lease the City Garage Unit through a lease purchase agreement or does not cause the execution and delivery of the Certificates of Participation, the parties understand that all references to the City Garage Unit Lease and the Certificates of Participation shall have no further force and effect and the Developer shall convey the City Garage Unit to City pursuant to a special warranty deed which meets the requirements of this Agreement and the City shall pay the Developer the Lease Transfer Amount in cash or other immediately available funds on the Leasing Date.

5.11 Closing. On or before the Leasing Date, the Parties shall deposit with the Escrow Holder the following:

5.11.1 Delivery by the Developer. The Developer shall deliver on or before the Leasing Date the following documents:

(a) The City Garage Unit Lease, Memorandum of Lease for recording, and a special warranty deed to the City Garage Unit which meets the requirements of this Agreement, executed in recordable form and ready for recording on the Leasing Date, together with an executed real estate excise tax affidavit prepared by the Escrow Holder. Only the Memorandum of Lease shall be recorded by the Escrow Holder. The special warranty deed shall be delivered to the City or the City's designee, as instructed by the City.

(b) Evidence reasonably satisfactory to the City that the City Garage Unit is free and clear of all liens arising by or through the actions of the Developer, its contractors, subcontractors or their respective agents and employees, other than Permitted Exceptions; provided, however, that if the title insurance policy to be issued in conjunction with Closing of the City Garage Unit contains an endorsement protecting against said liens, then no further evidence shall be required.

(c) Certification that the Developer is not a 'foreign person' within the meaning of the Foreign Investment In Real Property Tax Act.

(d) Evidence reasonably satisfactory to the City that the Parking Garage Condominium has been created in accordance with Washington law, Chapter 64.34 RCW, and that the appropriate condominium documents, including the Declaration, Survey Map and Plans have been recorded, or will be recorded simultaneously with Closing of this transaction, in the real property records of King County, Washington and that the City Garage Unit is insured by the Title Company accordingly.

(e) Copies of the Declaration, Survey Map and Plans, articles, bylaws, and current or initial operating budget of the Association.

(f) Evidence reasonably satisfactory to City that the conditions precedent set forth in Section 5.10.1 have been satisfied prior to Closing.

(g) Evidence that all original warranties which the Developer has received in connection with the construction of the Parking Garage (to the extent assignable and applicable to the City Garage Unit and to the extent such warranties have not expired in accordance with their terms), together with a duly executed assignment of warranties in a form reasonably satisfactory to City, or its designee, have been delivered and assigned, as applicable, to the Association and/or the owners of condominium units.

(h) Any partial reconveyance documents required to eliminate of record any existing mortgages or deeds of trust which are not Permitted Exceptions as hereinabove defined and any affidavit required to eliminate the Title Company exception for construction liens and the rights of parties in possession.

(i) A copy of the as built plans and specifications for the Parking Garage.

(j) An irrevocable commitment from the Title Company to issue the City or its designee an ALTA owner's standard coverage title insurance policy in form and substance satisfactory to City with liability in the amount of the Lease Transfer Amount showing fee simple title to the City Garage Unit vested in the City or its designee, including the Trustee if the City issues Certificates of Participation, subject only to this Agreement and the Permitted Exceptions, which title insurance policy shall contain, if requested by the City at its sole cost and expense, an endorsement providing affirmative coverage against construction liens. At the request of City, all or any portion of the owner's policy of title insurance shall be reinsured under reinsurance agreements and with reinsurers reasonably satisfactory to City, and the cost of such reinsurance, if any, shall be paid by the City.

(k) In the event the Developer has transferred all or any portion of its interest under this Agreement, either voluntarily or involuntarily, an assumption agreement satisfactory in form and substance to the City under which such transferee shall assume such rights, duties and obligations under this Agreement as the Developer may have assigned, transferred, or delegated to such transferee.

(l) Such resolutions, certificates or other documents as shall be reasonably required by the Escrow Holder in connection with closing the City's acquisition of the City Garage Unit.

(m) Any other documents, instruments, data, records or other agreements called for herein which have not been previously delivered.

5.11.2 Delivery by the City. The City shall deliver on or before the Leasing Date the following:

(a) Lease Transfer Amount in cash or other immediately available funds.

(b) The City Garage Unit Lease and Memorandum of Lease for recording, together with the real estate excise tax affidavit prepared by the Escrow Holder, duly executed and acknowledged by the City and Trustee.

(c) Copies of any Trust Agreement or other documentation executed by the Trustee or others necessary to cause the execution and delivery of the Certificates of Participation and the City Garage Unit Lease by the Trustee or the City's designee on or before the Leasing Date.

(d) Such ordinances, authorizations, certificates or other documents or agreements relating to the City, the City's designee or Trustee, as shall be reasonably required by the Escrow Holder in connection with Closing the City's acquisition of the City Garage Unit.

(e) Any other documents, instruments, data, records, or other agreements called for herein which have not been previously delivered.

5.11.3 Other Instruments. The Developer, the City, and the City's designee or Trustee, if applicable, shall each deposit such other instruments as may be reasonably required by Escrow Holder or as may be otherwise required to Close the escrow and consummate the acquisition of the City Garage Unit Property Interests in accordance with the terms hereof.

5.11.4 Prorations. All ownership, use, operation and maintenance expenses associated with the City Garage Unit, including, but not limited to, real and personal property taxes, special and other assessments, water, sewer and utility charges, amounts payable under contracts assumed by the City, annual permits and/or inspection fees (calculated on the basis of the respective periods covered thereby), and other expenses normal to the ownership, use, operation and maintenance of the City Garage Unit shall be prorated as of 12:01 a.m. on the Leasing Date so that the Developer bears all expenses of the City Garage Unit prior to the Leasing Date and City bears all expenses of the City Garage Unit on and after the Leasing Date. Under current Washington law, the City is exempt from payment of certain real and personal property taxes. In the event the City is exempt from payment of certain real and personal property taxes under Washington law on the Leasing Date, the City shall not be responsible for payment of the same on and after the Leasing Date. The Developer may seek reimbursement from the taxing authorities to whom the Developer may have paid any such real or personal property tax that is allocable to any period of time after the Leasing Date and City shall

cooperate with and make all reasonable efforts to assist the Developer in securing such reimbursement. If any revenue or expense amount cannot be ascertained with certainty as of the Leasing Date, it shall be prorated on the basis of the parties' reasonable estimates of such amounts, and shall be the subject of a final proration sixty (60) days after Closing or as soon thereafter as the precise amounts can be ascertained. Either party owing the other party a sum of money based on adjustments made to the prorations after the Leasing Date shall promptly pay that sum together with interest thereon at the rate of nine percent (9%) per annum from the date of demand therefor to the date of payment if payment is not made within thirty (30) days after the delivery of a statement therefor.

5.11.5 Costs and Expenses. The City shall pay all costs and expenses associated with (1) any real estate excise tax associated with the City Garage Unit Lease or other transfer of the City Garage Unit Property Interests; (2) any extended title insurance policy or any requested reinsurance or endorsements (and survey or other costs associated therewith); (3) execution and delivery of the Certificates of Participation or other City obligations incurred to finance the acquisition or transfer of the City Garage Unit Property Interests pursuant to the City's financial arrangements. The Developer shall pay the cost and expense associated with the City's ALTA owner's standard coverage title insurance policy. The Developer and the City shall each pay one-half (1/2) of the standard costs and expenses associated with escrow and recording fees. In the event that Closing involves a City Garage Unit Lease, the Parties understand and agree that the Developer shall not be obligated to pay any Closing or other costs and expenses associated with a subsequent transaction whereby the City exercises its right to purchase the City Garage Unit Property Interests.

5.11.6 Close of Escrow; Recording. On the Leasing Date, the Escrow Holder shall disburse the Lease Transfer Amount to the Developer and shall record the documents described in Section 5.11.1(a) (Memorandum of Lease only) and (h), if applicable, in the real property records of King County, Washington, and deliver the other documents described in Sections 5.11.1, 5.11.2 and 5.11.3. Escrow Holder shall deliver copies of all documents executed, delivered and/or recorded in connection with this transaction to the Developer, any project lender(s), the City, the City's designee or Trustee, if any, as applicable, together with closing statements in form customarily prepared by Escrow Holder within five days following the Leasing Date.

5.12 Maintenance of the Parking Garage.

5.12.1 Maintenance Responsibility. The Declaration shall provide an arrangement whereby the Association shall cause to be maintained and repaired the Parking Garage, including the City's Garage Unit, in a first-class condition and state of repair in accordance with industry standards of operators of multi-level parking garages associated with first-class urban regional open-air shopping centers, including but not limited to, the items of maintenance, upkeep and operation described below. The City shall provide the Association, or its designee, with such access to the City's Garage Unit as may be reasonably necessary for the Association, or its designee, to carry out its obligations under this Section. The costs and expenses of such maintenance and repair shall be an Association responsibility, with allocation thereof to the condominium units based upon their designated percentage interest in the Parking Garage.

5.12.2 Maintenance Standards. To ensure proper maintenance of the Parking Garage, the Declaration shall provide minimum maintenance standards for the Parking Garage, including all common area sidewalks, walkways, entrances and exits, stairways, elevators, roadways and parking surfaces inside the Parking Garage, which minimum maintenance standard shall include the following:

(a) All graphics, traffic and directional signs, pavement and striping shall be kept clean, distinct and legible, and replaced as necessary, including re-striping of parking space markings as deemed reasonably necessary by the Association.

(b) Adequate lighting is an important safety feature, and a strong maintenance program is necessary to preserve the lighting levels in the Parking Garage. Parking Garage lighting shall be repaired, replaced and renewed as may be necessary, including prompt replacement of burned out or defective bulbs or tubes with a color index of at least sixty-five (65) and the implementation of a group-relamping program in accordance with the manufacturer's recommendation.

(c) Ventilation equipment, traffic control equipment, lighting systems, electrical systems, sprinkler and life-safety systems and mechanical systems of the Parking Garage shall be repaired and replaced as necessary to keep them in first-class condition.

(d) Structural maintenance, treatment of concrete as required, and repair and replacement of expansion joints shall be performed as required.

(e) All areas of the Parking Garage shall be kept clean and free from graffiti, and any graffiti shall be promptly removed and the surface restored to its condition prior to the application of the graffiti as soon as reasonably practical.

(f) Elevators in the Parking Garage shall be maintained in first-class condition including (1) checking elevators daily, and (2) contracting with a licensed elevator maintenance firm to maintain the elevators in first-class condition.

5.13 Transfer of City Garage Unit. The Parties understand and agree that the Parking Garage is an integral part of the Mall, and that the Developer has a need to ensure that the Parking Garage, including the City Garage Unit, will be owned, operated, maintained and used in a manner consistent with this Agreement and the needs of the Developer. Accordingly, the Developer shall have the right to impose upon the City a deed restriction in any conveyance of the City Garage Unit Property Interests, whether by City Garage Unit Lease, special warranty deed or otherwise, that restricts the use of the Parking Garage consistent with this Agreement, and that prohibits conveyance, lease or other transfer of the City Garage Unit Property Interests, in whole or in part, whether voluntary or involuntary, to any person, entity or municipality other than (1) a governmental entity or municipality, subject to the prior written consent of the Developer, or its successors or assign, which consent shall not be unreasonably withheld; or (2) the Developer, or its successors or assigns; or (3) to any other person or entity, subject to the prior written consent of the Developer, or its successors or assigns, which consent may be granted or withheld at the sole discretion of the Developer, or its successors or assigns ("Permitted Transferees"). The Developer shall also have the right to condition any conveyance,

lease or other transfer of the City Garage Unit Property Interests, in whole or in part, upon assumption by the Permitted Transferee of all obligations of the City under this Agreement.

ARTICLE VI
120th AVE. NE IMPROVEMENTS

6.1 Preparation and Approval of Plans and Specifications.

6.1.1 Preparation of 120th Avenue NE Plans and Specifications. The Developer shall prepare plans and specifications for the improvement and realignment of 120th Avenue NE ("120th Avenue NE Improvements"), which plans and specifications shall be in accordance with this Agreement and generally consistent with the Public Plaza and 120th Avenue NE Design Standards attached as Exhibit C to this Agreement ("120th Avenue NE Plans and Specifications").

6.1.2 Budget Constraints.

(a) Unless otherwise mutually agreed between the City and the Developer, the 120th Avenue NE Improvements shall be based upon a total design and construction budget of not greater than $3,700,000.00.

(b) The budget includes the Actual Costs of two traffic signals, one at the intersection of the Public Plaza and 120th Avenue NE and another at the intersection of Totem Lake Way and 120th Avenue NE. No other traffic signals or traffic or mechanical devices are included in the design and construction budget, nor shall be required by the City in conjunction with the 120th Avenue NE Improvements, except to the extent requested by the City pursuant to Section 6.2.

(c) The Developer shall construct the Public Plaza Improvements and 120th Avenue NE Improvements within a combined budget of $7,300,000.00 (excluding the land value). The Developer shall be solely responsible for any cost overrun above the combined budget, except as provided in Section 6.2.

6.1.3 Administrative Approval. The Developer shall use reasonable efforts to coordinate input from the City, and to provide an opportunity for the City to review and comment on the 120th Avenue NE Plans and Specifications prior to formal submission for administrative approval. The Developer shall submit the proposed 120th Avenue NE Plans and Specifications to the City for administrative review and approval by the City Planning Director. The City Planning Director shall issue his administrative decision approving, denying or requesting modification to the 120th Avenue NE Plans and Specifications within twenty-one (21) days after submission or the 120th Avenue Improvement Plans and Specifications shall be conclusively deemed approved. In the event of administrative denial or request for modification, the City Planning Director shall specify precisely the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. The Developer and the City must approve the 120th Avenue NE Plans and Specifications and, in the event of a dispute, the Dispute Resolution procedures set forth in Article XVI shall apply.

6.2 Modifications to 120th Avenue NE Plans and Specifications. Prior to administrative approval of the 120th Avenue NE Plans and Specifications, or subsequent thereto if mutually agreed in writing by the City and the Developer, the City may request changes or additions to the proposed 120th Avenue NE Plans and Specifications. If Actual Costs of the the 120th Avenue Improvements exceeds $3,700,000.00, then the City shall pay for all of such changes and additions, and shall receive credit toward the City Financial Participation only for the construction budget amount of $3,700,000.00.

6.3 Construction; Schedule. The 120th Avenue NE Improvements shall be constructed generally in conjunction with Phase 1 of the Project. The City shall cooperate with the Developer with regard to scheduling and construction of the 120th Avenue NE Improvements. The 120th Avenue NE Improvements shall constitute a separate and distinct project from the private and public portions of the Project.

6.4 Selection of Contractors; Approval of Bids. The Developer shall use its reasonable business judgment, as it deems appropriate in bidding, awarding and performing the work associated with the 120th Avenue NE Improvements. The Developer shall have the right, at its sole discretion, without competitive bidding to enter into contracts with an engineer for work performed on 120th Avenue NE, and a general contractor to manage the work performed on 120th Avenue NE, which may be the same engineer and/or general contractor retained by the Developer for the overall Project; provided, however, that if the general contractor selected to manage the work performed on 120th Avenue NE will also be providing any of the actual construction work, then the work to be performed by the general contractor shall also be subject to the competitive bidding if it will exceed Twenty Thousand Dollars ($20,000.00). All additional contractors associated with contracts for work performed on 120th Avenue NE Improvements in excess of Twenty Thousand Dollars ($20,000.00) shall be selected by the Developer, or the general contractor on the Developer's behalf, through a competitive bidding process with all qualified bids considered, which is similar to the process described in RCW 35.23.352, administered as follows: (1) All contracts shall be let at public bidding upon publication of notice calling for sealed bids upon the work; (2) the notice shall be published in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, at least thirteen (13) days prior to the last date upon which bids will be received; (3) the notice shall generally state the nature of the work to be done, that plans and specifications therefor shall then be available from the Developer for inspection, and will require that bids be sealed and filed with the Developer within the time specified therein; (4) the Developer, or its general contractor, may, in its sole discretion, include in the solicitation a requirement that bidders submit evidence of having successfully (in terms of schedule, quantity and cost) performed projects of comparable size and scope; (5) each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, postal money order, or surety bond to the Developer for a sum of not less than five percent (5%) of the amount of the bid; and (6) no bid shall be considered unless accompanied by such bid proposal deposit. The Developer shall give notice to the City at least ten (10) days prior to the date of publication of bid solicitations, provide the City with the text of the proposed solicitation, and will give due consideration to any concerns or suggestions raised by the City; provided, however, that the Developer, or its general contractor, it its sole discretion, shall make final decisions concerning selection of all qualified bids. The Developer shall provide the City with details of all qualified, responsive and timely

bids received. If no bids are received on the first call, the Developer may re-advertise and make a second call, or may enter into a contract without any further call.

Notwithstanding the above, The Developer, or its general contractor, at its sole discretion, may award subcontracts for amounts under Two Hundred Thousand Dollars ($200,000.00) by using the City's then-current small works roster in accordance with the following procedure: (1) The Developer shall obtain telephone, written or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established; (2) a contract awarded from a small works roster need not be advertised, but invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished (detailed plans and specifications need not be included in the invitation); (3) quotations may be invited from all appropriate contractors on the appropriate small works roster; (4) as an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted; (5) if the estimated cost of the work is from One Hundred Thousand Dollars ($100,000.00) to Two Hundred Thousand Dollars ($200,000.00), then the Developer may choose to solicit bids from less than all the appropriate contractors on the appropriate small works roster, but must also notify the remaining contractors on the appropriate small roster that quotations on the work are being sought. The Developer has the sole option of determining whether this notice to the remaining contractors is made by publishing notice in a legal newspaper in general circulation in the areas where the work is to be done; mailing a notice to these contractors; or sending a notice to these contractors by facsimile or other electronic means. The Developer shall give notice of the proposed small roster works bidding process to the City at least ten (10) days prior to commencement, and will give due consideration to any concerns or suggestions raised by the City; provided, however, that the Developer, or its general contractor, it its sole discretion, shall make final decisions concerning selection of all qualified bids. The Developer shall provide the City with details of all qualified, responsive and timely bids received.

6.5 Performance and Payment Bond. Because this is a private project, the Developer shall not be required to provide, nor be required to have the general contractor or any subcontractors provide, a performance and payment bond associated with the 120th Avenue NE Improvements.

6.6 Insurance and Indemnification.

6.6.1 Insurance. The Developer shall provide the insurance policies and coverages set forth in Section 12.1.

6.6.2 Indemnification of the City. To the maximum extent permitted by law, the Developer agrees to and shall indemnify and hold the City harmless from and against all liability, loss, damage, cost, or expenses (including reasonable attorneys' fees and court costs, amounts paid in settlements, and judgment) arising from or as a result of the death of any person or of any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the 120th Avenue NE right-of-way and which shall be directly or indirectly caused by the acts, errors, or omissions of the Developer or its officials, servants, employees, officers, or contractors in conjunction with the work associated with the

120th Avenue NE Improvements. The Developer shall not be responsible for (and such indemnity shall not apply to) the negligence of the City or its respective officials, servants, employees, or officers.

6.6.3 Indemnification of the Developer. To the maximum extent permitted by law, the City agrees to and shall indemnify and hold the Developer harmless from and against all liability, loss, damage, cost, or expenses (including reasonable attorneys' fees and court costs, amounts paid in settlements, and judgment) arising from or as a result of the death of any person or of any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the 120th Avenue NE right-of-way and which shall be directly or indirectly caused by the acts, errors, or omissions of the City or its officials, servants, employees, officers, or contractors in conjunction with the work associated with the 120th Avenue NE Improvements. The City shall not be responsible for (and such indemnity shall not apply to) the negligence of the Developer or its respective officials, servants, employees, or officers or contractors.

6.6.4 Limitation on Indemnification. Notwithstanding the above, with respect to matters that are within the scope of RCW 4.24.115, relating to construction project indemnity, the Parties shall not be entitled to indemnification for damages arising out of bodily injury to persons or damage to property by reason of or caused by the concurrent negligence of the City or the Developer, or their agents respective officials, servants, employees, officers or contractors, to the extent of the indemnittee's negligence, and the Parties specifically waive immunity under Title 51 RCW, and application of the Public Duty Doctrine, to this extent.

6.7 Permits and Approvals. The Developer shall be responsible for providing, obtaining and paying for all required federal, state and local government permits and approvals for the 120th Avenue NE Improvements.

6.8 Prevailing Wages. The Developer shall pay or cause to be paid to all workers, laborers and mechanics employed to perform the construction, alteration, improvement, maintenance or repair of the 120th Avenue NE Improvements not less than the prevailing rates of wages, as may then be determined by the Washington State Department of Labor and Industries for the particular craft in the particular geographic area. Unless otherwise specifically provided in this Agreement, the requirement of this subsection shall apply only to the 120th Avenue NE Improvements, and shall not be deemed to require the Developer to pay or cause to be paid prevailing rates of wages for work performed on any portion of the Project.

6.9 Construction Observation and Inspections. Unless otherwise mutually agreed, the City, or its designee(s), and the Developer, or its designee(s), shall meet monthly during construction of the 120th Avenue NE Improvements to discuss and inspect progress and tour the 120th Avenue NE Improvements. The City may request the Developer to give the City seven (7) days' advance notice of any construction activity involving underground improvements owned or to be owned by the City. The City shall be allowed to inspect and observe such construction activity during a mutually convenient time that will not unreasonably disrupt or interfere with on-going work on the 120th Avenue NE Improvements.

6.10 Construction Warranty. The Developer's general contractor, pursuant to the construction contract(s) for the 120th Avenue NE Improvements, or the Developer, at the Developer's option, shall for one (1) year after acceptance of the 120th Avenue NE Improvements by the City, correct and repair any material defects appearing or developing in the workmanship or materials furnished in respect to the 120th Avenue NE Improvements. Upon receiving written notice from the City of such defect or nonconforming work, the Developer or Developer's general contractor, as applicable, shall promptly, at its own cost and expense, correct, or cause to be corrected, any such defect or cause to be made such repairs or alterations as shall be necessary to conform the 120th Avenue NE Improvements to the approved 120th Avenue NE Plans and Specifications. The City shall cooperate with the Developer with regard to scheduling any corrective work associated with the 120th Avenue NE Improvements. If the Developer fails to proceed promptly, or after proceeding, fails to continue with reasonable diligence to cure such defect or repair such nonconforming work, then the matter shall be submitted for resolution consistent with the Dispute Resolution provisions of Article XVI.

6.11 Substantial Completion of 120th Avenue NE Improvements. The Developer shall provide written certification of Substantial Completion to the City. The City shall have fourteen (14) days after receipt of the certification to notify the Developer in writing that it accepts or rejects the 120th Avenue NE Improvements or the 120th Avenue NE Improvements shall be conclusively deemed accepted. In the event of rejection, the City shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. If the dispute cannot be resolved, then it shall be submitted to Dispute Resolution in accordance with Article XVI. In the event that the person or entity presiding over the last step in the Dispute Resolution process, whether by mediation, arbitration or litigation, determines that the Developer "substantially prevails" in the Dispute Resolution, then the Developer shall be entitled to recover its damages relating to any delay in acceptance by the City, together with its reasonable attorneys' fees and costs.

6.12 Verification of Actual Costs. Upon completion of the 120th Avenue NE Improvements, the Developer shall provide the City an accounting of the Actual Costs associated with the 120th Avenue NE Improvements, in a form determined by the Developer in accordance with its standard cost accounting practices. The City shall within thirty (30) days after receipt of the notification, to notify the Developer in writing whether the City accepts, denies or requests modification of the accounting; providing, however, that in the event the Developer does not receive a timely written response from the City, then the Actual Costs associated with the 120th Avenue NE Improvements shall be conclusively deemed accepted and approved. In the event the City refuses to accept the 120th Avenue NE Improvements, or denies or requests modification to the accounting, the City shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. The Parties shall resolve any dispute through the Dispute Resolution process set forth in Article XVI; provided, however, that a dispute involving accounting verification shall not delay payment or reimbursement to the Developer for the 120th Avenue NE Improvements. In the event that on the date designated for payment and reimbursement there is yet unresolved any issues relating to Actual Costs, then the City shall pay to the Developer the Actual Costs requested by the Developer for the 120th Avenue NE Improvements, less the amounts unresolved, which shall be placed in an interest bearing escrow set aside account designated by the Developer. The amount in dispute shall then be submitted to Dispute Resolution in accordance with Article XVI;

provided, however, that in the event that the person or entity presiding over the last step in the Dispute Resolution process, whether by mediation, arbitration or litigation, determines that the Developer "substantially prevails" in the accounting dispute, the Developer shall be entitled to immediate disbursement of the escrow set aside, interest accrued therein, and shall be entitled to recover its reasonable attorneys' fees and costs associated therewith. Upon acceptance by the City, and reimbursement to Developer of the Actual Costs associated with the 120th Avenue NE Improvements, the Developer shall deliver to the City two complete sets of as built drawings.

6.13 Purchase Price and Timing of Payment. On any business day designated by the Developer, which business day shall be no earlier than sixty (60) days after acceptance of the 120th Avenue NE Improvements, and subject to the provisions of Section 6.12 relating to verification of Actual Costs, the City shall reimburse the Developer for the Actual Costs of the 120th Avenue NE Improvements.

6.14 Maintenance of 120th Avenue NE. The City shall, at its sole cost and expense, maintain the streets and roadways of 120th Avenue NE, as defined in Section 4.10, in accordance with its applicable standards for maintaining and repairing City streets and roadways in retail and commercial areas of the City. For a period of twenty-five (25) years from the City's acceptance of the 120th Avenue NE Improvements, the Developer shall maintain the remaining portions of the 120th Avenue NE right-of-way, which is composed primarily of sidewalks and pedestrian areas, in accordance with the same maintenance standards as are applicable to the Public Plaza in Section 4.10. In the event that either Party concludes that the other Party has failed to maintain, repair, replace or improve 120th Avenue NE in accordance with this Agreement, then the matter shall be submitted for resolution consistent with the Dispute Resolution provisions of Article XVI. In the event that the Developer obtains a Commercial General Liability insurance policy covering portions of the 120th Avenue NE right-of-way subject to its maintenance obligations under this Agreement, then the Developer shall name the City as an "additional insured" to the extent of any claims arising out of, or relating to, the 120th Avenue NE maintenance obligations of the Developer.

6.15 Relocation of Utilities in 120th Avenue NE. The Actual Costs associated with the 120th Avenue NE Improvements will include the relocation of water, sewer, stormwater conveyance utilities and Franchise Utilities in accordance with the 120th Avenue NE Plans and Specifications. The City will assist with coordination and arrangements for temporary disruption, if any, and relocation of any utilities.

6.16 Dedication of Right of Way for 120th Avenue NE. Unless otherwise mutually agreed by the City and the Developer, simultaneously with the reimbursement of Actual Costs of the 120th Avenue NE Improvements, the Developer shall dedicate to the City marketable fee simple title to those portions of realigned 120th Avenue NE that the City does not own as right-of-way. Likewise, the City shall vacate to the Developer marketable fee simple title to those portions of realigned 120th Avenue NE that were, prior to realignment, part of the public right-of-way, but after realignment are no longer needed within the right-of-way. Simultaneously with the dedication and/or vacation of land, the City shall pay the Developer for any net increase in land at the rate of thirty dollars ($30.00) per square foot.

ARTICLE VII
INFRASTRUCTURE TO SUPPORT REDEVELOPMENT

7.1 Transportation.

7.1.1 The City has issued a Concurrency Test Notice for roads (traffic) for the entire Project. The Notice shall be valid for the term of this Agreement. The City will issue a Certificate of Concurrency for the Project upon issuance of the first building permit for Phase 1 of the Project. The Certificate of Concurrency shall remain valid for the term of the Agreement. If the Project Plan is amended, and the City Planning Director determines that the p.m. peak hour trips for the revised Project have increased over the number of such trips in the road (traffic) concurrency analysis for the original Project, the revised Project shall be retested for road (traffic) concurrency. The Certificate of Concurrency for any new Concurrency Test Notice for the revised Project shall be issued at the same time as the original Certificate of Concurrency (or if the first building permit for Phase 1 has already been issued, then upon issuance of the next building permit for the Project).

7.1.2 Except as otherwise included in the Public Plaza Improvements or the 120th Avenue NE Improvements, the Developer shall not be required to fund any off-site improvements, including, but not limited to, any transportation, roadway, intersection or gateway improvements associated with redevelopment of the Mall, including, but not limited to, streets, boulevards, intersections, traffic phasing or signalization, monuments, artwork, sculptures or signage. However, the Developer shall be responsible for payment of any transportation mitigation (impact) fees associated with the Project established by the KMC. Notwithstanding the above, there is a possibility that the cumulative transportation impacts associated with the entire Project could potentially exceed, but not significantly, the transportation level of service threshold associated with the intersection of 120th Avenue NE and Totem Lake Mall Boulevard at such time as the proposed office building is constructed. In conjunction with construction of the office building, the City shall perform SEPA review as provided for in Section 3.1.

7.1.3 The Developer shall not be required to fund any on-site transportation and/or intersection improvements associated with the Project. To the extent that any on-site transportation and/or intersection improvements are deemed necessary or advisable including, but not limited to, public street improvements, turn lanes, curbs, utilities, traffic signalization and/or signage, the City shall be solely responsible for all costs and expenses associated therewith.

7.2 Water and Sanitary Sewer. The City will assist the Developer in the coordination of water and sewer utility infrastructure issues involving Northshore Utility District.

7.3 Stormwater.

7.3.1 There is an off-site stormwater conveyance system, including capacity adequate to serve the Project. The Developer shall not be required to construct or fund any off-site stormwater conveyance system improvements associated with the Project.

7.3.2 The Developer shall provide, at its sole cost and expense, and in accordance with the 1998 King County Surface Water Design Manual ("1998 Design Manual"),

basic water quality treatment for all on-site pollution generating new impervious areas, and Level 2 flow control for all new impervious areas within the Project. The Developer shall not be required to provide any other stormwater conveyance system infrastructure or improvements within the Project, including, but not limited to, any additional detention for the existing impervious areas. Notwithstanding anything to the contrary in this Agreement, the 1998 Design Manual shall govern all stormwater conveyance system matters associated with the Project throughout the term of this Agreement. The parties shall develop a mutually acceptable utility plan to coordinate the tie-in of off-site and on-site stormwater conveyance infrastructure.

ARTICLE VIII
CITY FINANCIAL PARTICIPATION

The City shall pay for or provide public financial participation in the Project in an amount equal to $15,000,000.00. The City shall receive credit toward the City Financial Participation for (i) up to, but not to exceed, $3,600,000.00 of the Actual Costs of the Public Plaza Improvements; (ii) up to, but not to exceed, $3,700,000.00 of the Actual Costs of the 120th Avenue Improvements; (iii) the amount paid to the Developer for land within the Public Plaza; (iii) the Lease Transfer Amount paid by the City (or its Trustee) for the City Garage Unit; (v) all, or a portion of, any real estate excise tax associated with transfer of the Public Plaza Property Interests to be credited to the City's Financial Participation as set forth in Section 4.9.5; and (vi) the amount paid to the Developer for any net increases in land dedicated by the Developer for 120th Avenue NE ("Components of City Financial Participation"). The Parties understand and agree that the entire $15,000,000.00 shall be expended by the City on components of City Financial Participation.

ARTICLE IX
VESTING

9.1 General Vesting. The Project shall be vested to the federal, state and local laws, regulations and resolutions existing on the effective date of this Agreement ("Vested Laws"), including, but not limited to, the Comprehensive Plan, Zoning Use Tables, Totem Lake Neighborhood Sub-Area Plan, Development Regulations, Building Codes and Regulations, Design Guidelines, and provisions of the KMC and KZC applicable to the Project; provided, however, that to the extent any portion of the Project may be "grandfathered" or vested as a non-conforming use under any prior governmental Development Regulation, law, regulation, building or other code, policy or guideline, this provision shall not be deemed to inhibit or prevent the Developer from taking advantage thereof.

9.2 Amendments. During the vested period, should any of the Vested Laws be amended, modified or changed, the Developer, at its sole discretion, may elect to have a permit or approval for the Project considered under all of such amended Vested Laws in effect on the date of application for the permit or approval; provided, however, that in the event of amendments, changes or modifications to City ordinances, regulations, resolutions or policies, including, but not limited to, the Comprehensive Plan, Zoning Use Tables, TL 2 Zoning regulations, Development Regulations, Building Codes and Regulations, Design Guidelines, and provisions of the KMC and KZC applicable to the Project, the Developer may elect to have such

amended City ordinances, regulations, resolutions or policies apply to the permit or approval without adversely impacting its rights under other Vested Laws.

9.3 City Reservation of Rights. Notwithstanding the foregoing, the City reserves the authority under RCW 36.70B.170(4) to impose new or different regulations, to the extent required by the federal or state governments, or by a serious threat to public health and safety.

ARTICLE X
PARTIES' REPRESENTATIVES

10.1 Designation of City's Representative. The City shall designate, in writing, a person (an Authorized Representative) who shall have the power, authority and right on behalf of the City to: review and accept or reject all documents, plans, applications, and requests required or allowed by the Developer to be submitted to the City pursuant to this Agreement; consent to all actions, events, and undertakings by the Developer for which consent is required by the City in this Agreement; and make all appointments of persons or entities required to be appointed or designated by the City in this Agreement. The City may change such Authorized Representative at any time upon written notice to the Developer.

10.2 Designation of Developer's Representative. The Developer shall designate, in writing, a person (an Authorized Representative) who shall have the power, authority, and right on behalf of the Developer to: review and accept or reject all documents, plans, applications, and requests required or allowed by the Developer to be submitted to the City pursuant to this Agreement; consent to all actions, events, and undertakings by the Developer for which consent is required by the Developer in this Agreement; and make all appointments of persons or entities required to be appointed or designated by the Developer in this Agreement. The Developer may change such Authorized Representative at any time upon written notice to the City.

ARTICLE XI
COMPLIANCE WITH LAWS AND ORDINANCES

Throughout the term, and subject to the provisions, of this Agreement, the Developer, at the Developer's sole cost and expense, shall promptly comply with all applicable laws and ordinances, as they relate to the Property and the Project. To the extent that the Developer's compliance shall require the cooperation and participation of the City, the City agrees to use its best efforts to cooperate and participate.

ARTICLE XII
INSURANCE

12.1 Insurance Requirements. Until the completion of the Public Plaza, City Garage Unit and 120th Avenue NE Improvements, the Developer shall maintain insurance covering these public aspects of the Project, including but not limited to the following requirements:

12.1.1 Builders All Risk Comprehensive Coverage. With regard to 120th Avenue NE Improvements, the Developer shall carry, or shall require the general contractor(s) to carry, Builders All Risk Comprehensive Coverage Insurance, including earthquake and flood, and to include amounts sufficient to prevent the City or the Developer from becoming a co-insurer

under the terms of the applicable policies but in any event in an amount not less than one-hundred percent (100%) of the then full "Replacement Cost," being the cost of replacing the 120th Avenue NE Improvements.

12.1.2 Commercial General Liability. The Developer shall carry, or shall require its general contractor(s) to carry, Commercial General Liability insurance providing coverage against claims for bodily injury, death, or property damage on the Property with broad form liability and property damage endorsement, such insurance to have combined single limits of liability of no less than Five Million Dollars ($5,000,000.00), per occurrence and aggregate.

12.2 Insurance Policies. Insurance policies required herein:

12.2.1 Qualifications. Shall be issued by companies authorized to do business in the State of Washington with the following qualifications:

(a) The companies must be rated no less than "A" as to general policy holders rating and no less than "X" as to financial category in accordance with the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Incorporated; provided, however, for any insurance requirements imposed upon subcontractors, a financial category no less than "VIII" shall be acceptable.

(b) To the extent reasonably available for insurers, the policies shall name the City as an additional insured.

(c) The policies shall be issued as primary policies; provided, however, that the Developer, and general contractor(s) and subcontractors, may be insured under one (1) or more blanket insurance policies, which shall be permitted and acceptable.

12.2.2 Attachments. To the extent reasonably available from insurers, each such policy or certificate of insurance mentioned and required in this Article shall have attached thereto:

(a) An endorsement that such policy shall not be canceled or materially changed without at least thirty (30) days' prior written notice to the Parties; provided, however, that such policy may be an annual or periodic policy, renewed on an annual or periodic basis, and the City shall be provided a renewal certificate therefor within thirty (30) days before the expiration date.

(b) An endorsement to the effect that the insurance, as to anyone insured, shall not be invalidated by any act or neglect of any other additional insured.

(c) An endorsement pursuant to which the insurance carrier waives all rights of subrogation against the Parties.

(d) An endorsement pursuant to which this insurance is primary and noncontributory.

12.2.3 Certificates of Insurance. The certificates of insurance and insurance policies shall be furnished to the Parties prior to commencing construction on each of the public projects (Public Plaza, City Garage Unit and 120th Avenue NE Improvements) under this Agreement. The certificate(s) shall clearly indicate the insurance and the type, amount, and classification required.

12.2.4 Cancellation. Cancellation of any insurance or nonpayment by the Developer of any premium for any insurance policies required by this Agreement shall constitute an Event of Default of this Agreement.

12.3 Adjustments. The types of policies, risks insured, coverage amounts, deductibles and endorsements may be adjusted from time to time as the Parties may mutually determine in writing.

ARTICLE XIII
ENVIRONMENTAL INDEMNIFICATION

13.1 Indemnification. Subject to the limitations of Sections 13.2 and 13.3, the Developer shall indemnify and hold the City harmless from and against any and all liability, loss, damage, cost, or expenses (including reasonable attorney's fees and court costs, amounts paid in settlements, and judgment) arising from or as a result of preexisting environmental contaminants on or beneath the Public Plaza, the portion of 120th Avenue NE dedicated to the City pursuant to this Agreement, and the Parking Garage, including any such liability, loss, damage, costs, or expenses resulting from the past or future migration of such environmental contaminants from the Property to any other property. As used in this section, "preexisting" means those environmental contaminants that were present on or beneath the Property prior to the date of execution of this Agreement. "Environmental contaminants" shall include without limitation:

13.1.1 Those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.)("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub.L. 99 499 100 Stat. 1613)("SARA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.)("RCRA"), and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

13.1.2 Those substances listed in the United States Department of Transportation Table (49 C.F.R. 172. 101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. Part 302 and amendments thereto);

13.1.3 Any material, waste, or substance which is (A) petroleum, (B) asbestos, (C) polychloninated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 3.11 of the Clean Water Act (33 U.S.C. § 1317); (E) flammable explosives, or (F) radioactive materials;

13.1.4 Those substances defined as "dangerous wastes," "hazardous wastes," or as "hazardous substances" under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., the Water Pollution Control Act, RCW 90.48.010 et seq., the Hazardous Waste

Management Statute, RCW 70.105.0 10 et seq., the Toxic Substance Control Act, RCW 70.105B.010 et seq., and the Model Toxics Control Act, RCW 70.105D.010 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

13.1.5 Storm water discharge regulated under any federal, state or local law, ordinance or regulation relating to storm water drains, including, but not limited to Section 402(p) of the Clean Water Act, 33 U.S.C. Section 1342 and the regulations promulgated thereunder, all as amended; and

13.1.6 Such other substances, materials, and wastes which are regulated as dangerous, hazardous, or toxic under applicable local, state or federal law, or the United States government, or which are classified as dangerous, hazardous, or toxic under federal, state, or local laws or regulations.

13.2 Third Parties. This agreement by the Developer to indemnify and hold the City harmless applies to claims brought by any third party based upon state or federal statutory or common law, resulting from the release, threatened release, or migration of preexisting environmental contaminants and any property damage or damages for personal injury related thereto. As used in this section, "release" shall mean releasing, spilling, leaking, pumping, pouring, flooding, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

13.3 Existing Contaminants. This agreement to indemnify and hold harmless applies only to claims resulting from those environmental contaminants that were present on or beneath the Property prior to the date of execution of this Agreement. In addition, this agreement to indemnify and hold harmless does not apply to any release, threatened release, or migration of environmental contaminants from City rights-of-way, including, but not limited to public streets and roadways, or resulting from the actions of the City, its officers, agents, or employees.

ARTICLE XIV
RIGHT TO ASSIGN OR OTHERWISE TRANSFER

14.1 Assignment Right. During the term of this Agreement, the Developer shall have the right and privilege to sell, assign, or otherwise transfer this Agreement to such other persons, firms, corporations, partnerships, joint ventures, and federal, state, or municipal government or agency thereof, as the Developer shall select ("Transferee"); provided, that:

14.1.1 Prior to transfer of the Public Plaza and City Garage Unit to the City, or its designated Trustee, the Developer must obtain the prior written consent of the City to the proposed Transferee, which consent shall not be unreasonably withheld (after transfer of the Public Plaza and City Garage Unit, consent of the City shall not be required);

14.1.2 Such sale, assignment, or transfer shall be made expressly subject to the terms, covenants, and conditions of this Agreement;

14.1.3 There shall be delivered to the City a duly executed and recordable copy of the document evidencing such transfer; and

14.1.4 Such transfer shall not be effective to bind the City until the Transferee has assumed all obligations of the Developer under this Agreement and notice thereof is given to the City, and such notice shall designate the name and address of the Transferee.

14.2 Succession. The Transferee (and all succeeding and successor Transferees) shall succeed to all rights and obligations of the Developer under this Agreement, including the right to mortgage, encumber, and otherwise assign, subject, however, to all duties and obligations of the Developer in and pertaining to the then unperformed provisions of this Agreement. Upon such transfer by the Developer, or by a successor in accordance with the requirements of this section, the Developer (and/or its successive Developer or Developers) as Transferor in such a transfer shall not be released and discharged from all of its duties and obligations hereunder which pertain to the then unperformed provisions of this Agreement, which are not then due and payable, without the written consent and release of the City.

ARTICLE XV
DEFAULT

15.1 Events of Default. The following shall constitute events of default under this Agreement ("Events of Default"):

15.1.1 A default by a Party in keeping, observing or timely performing any of its duties and/or obligations under this Agreement;

15.1.2 The making by the Developer of an assignment for the benefit of creditors or filing a petition in bankruptcy or of reorganization under any bankruptcy or insolvency law or filing a petition to effect a composition or extension of time to pay its debts;

15.1.3 The appoint of a receiver or trustee of the Property, which appointment shall not be vacated or stayed within six (6) months;

15.1.4 The filing of a petition in bankruptcy against the Developer or for its reorganization under any bankruptcy or insolvency law which shall not be dismissed or stayed by the court within six (6) months after such filing.

15.2 Remedies in the Event of Default. If an Event of Default shall occur, or in the event of a dispute, claim or controversy arising out of, or relating to this Agreement, then either Party shall have the rights and remedies, and shall be required to proceed in accordance with, the Dispute Resolution provisions in Article XVI; provided, however, that in the event Dispute Resolution is unsuccessful, the Parties shall have all rights, remedies and causes of action, at law or in equity, available under the laws of the State of Washington.

ARTICLE XVI
DISPUTE RESOLUTION

16.1 Disputes and Coordination Issues. Whenever any dispute arises between the Parties under this Agreement ("Dispute"), including any default, controversy or claim arising out of relating to this Agreement, or any breach thereof, which are not resolved by routine meetings or communications, the provisions of this Article XVI shall apply. Either Party shall have the

right to commence a resolution process by issuing a written request to the other Party, which request shall contain brief details of the Dispute ("Dispute Notice"), excepting only those disputes subject to Section 16.5, which shall not require a Dispute Notice.

16.2 Cooperative Discussions. The Authorized Representatives of the Parties shall seek in good faith to resolve any such dispute or concern within ten (10) days after the date of the Dispute Notice. The Authorized Representatives shall meet within five (5) days after the date of the Dispute Notice, and shall continue to meet thereafter, as reasonably requested by a Party, in an attempt to resolve the Dispute. If the Dispute is resolved by the Authorized Representatives, the resolution shall be recorded in writing and signed by the Authorized Representatives of each Party and that resolution shall be final and binding on both Parties. If the Parties are unable to resolve the Dispute through cooperative discussions within ten (10) days after the date of the Dispute Notice, then except as specifically provided in Section 16.4 for binding arbitration of monetary disputes less than $50,000.00, the Parties may immediately pursue any remedies available under Washington law, and may commence litigation prior to, and without regard to, the provisions of Section 16.3 and 16.4, which shall be deemed entirely voluntary and discretionary.

16.3 Mediation. If the Parties are unable to resolve a Dispute in accordance with the provisions of Section 16.2, the Parties may consider the use of voluntary non-binding mediation. In the event that non-binding mediation is agreed upon, the site of the proceedings shall be Kirkland, Washington, unless otherwise agreed in writing by the Parties. The rules for mediation, the selection of the mediator, and the timetable and procedures for mediation, shall be determined by mutual agreement of the parties. The mediator shall be skilled in the legal and business aspects of the subject matter of this Agreement. The mediation shall be conducted without prejudice to either Party and in strict confidence. Each Party shall share equally in the costs of the mediation except that each Party shall bear its discretionary costs, including, but not limited to, its attorneys' fees and expenses. If the Dispute is settled through mediation, the terms of the settlement shall be recorded in writing and signed by the Authorized Representatives of the Parties. Unless otherwise mutually agreed by the Parties in writing, the mediator shall not be utilized in any subsequent proceeding to provide evidence in any way relating to the Dispute, nor shall the mediator be entitled to act as a fact or expert witness to either Party in any subsequent proceeding. If within forty-five (45) days after the date of the Dispute Notice, the mediation has not resulted in settlement of the Dispute, then the mediation shall, unless otherwise mutually agreed in writing by the Parties, be terminated. If either Party withdraws from mediation at any time, the mediation shall be terminated.

16.4 Arbitration. If the Parties are unable to resolve a Dispute in accordance with the provisions of Section 16.2, the Parties may consider the use of voluntary binding arbitration; provided, however, that binding arbitration shall be required for any strictly monetary Dispute, the value or potential financial impact of which is agreed by the Parties to be less than $50,000.00. In the event that binding arbitration is required, or mutually agreed upon, and unless otherwise mutually agreed by the Parties in writing, the site of the proceedings shall be Kirkland, Washington, and Washington law shall govern the arbitration proceedings. Upon completion of the cooperative discussions set forth in Section 16.2, the arbitration process shall commence immediately. The Parties shall determine by mutual agreement the rules for arbitration, the selection of the arbitrator, and the timetable and procedures for arbitration, including, but not

limited to, (i) the extent, form and time limits applying to any documentary or oral evidence of the Parties to be submitted to arbitration; (ii) site visits or inspections; (iii) meetings with the Parties; and (iv) appointment of experts; provided, however, that in the event the Parties are unable to agree within twenty-five (25) days after the date of the Dispute Notice, then the Rules of the Judicial Arbitration and Mediation Service, Seattle office, shall apply. The arbitrator shall be skilled in the legal and business aspects of the subject matter of this Agreement. The arbitration shall be conducted without prejudice to either Party and in strict confidence. The arbitrator shall decide the Dispute acting impartially and in good faith. The arbitrator shall reach a decision and communicate the decision in writing to the Parties, providing the basis for the decision. The arbitrator's decision shall be final and binding on the Parties. The Parties shall implement the arbitrator's decision without delay. The arbitrator's fees and expenses, the other costs of arbitration, and the Parties' reasonable attorneys' fees and costs shall be borne by the Parties as the arbitrator shall specify in his decision; provided, however, that the "substantially prevailing" Party shall be entitled to recover its arbitration expenses and reasonable attorneys' fees and costs in preparation for, and during, the arbitration process. Unless otherwise mutually agreed by the Parties in writing, the arbitrator shall render a final decision on the Dispute within sixty (60) days after the date of the Dispute Notice. The arbitrator shall not be utilized in any subsequent proceeding to provide evidence in any way relating to the Dispute, nor shall the arbitrator be entitled to act as a fact or expert witness to either Party in any subsequent proceeding.

16.5 Litigation. If the Parties are not required, or do not mutually agree, to submit a Dispute to mediation under Section 6.3, or arbitration under Section 6.4, then after the time period set forth in Section 16.2 for cooperative discussions, either Party shall have the right and authority to commence litigation immediately, and primary jurisdiction for the resolution of any Dispute relating to, or arising out of, this Agreement shall reside in the Washington State Superior Court, King County, Washington. The Parties shall have all rights and remedies, whether at law or in equity, under Washington law, including, but not limited to, specific performance, damages and injunctive relief.

16.6 Equitable Proceedings.

16.6.1 In the event a Party desires to seek interim relief, whether affirmative or prohibitive, in the form of a temporary restraining order, preliminary injunction, or other interim equitable relief with respect to a Dispute either before or after the initiation of a dispute resolution proceeding, that Party may initiate the proceeding necessary to obtain such relief ("Equitable Proceeding"). Nothing in this Article XVI shall be construed to suspend or terminate the obligation of the Parties to comply with the provisions of Sections 16.2, 16.3 and 16.4 with respect to the Dispute that is the subject of such Equitable Proceeding while such Equitable Proceeding is pending, including any appeal or review.

16.6.2 Notwithstanding the decision of an arbitrator or mediator, as may be applicable, any interim relief granted by such Equitable Proceeding shall not be reversed or modified by the arbitrator's or mediator's determination, and any factual or legal determination made in such Equitable Proceeding shall be binding upon the Parties in the Dispute before any arbitrator or mediator.

ARTICLE XVII
MISCELLANEOUS

17.1 No Third Party Rights. Except as specifically set forth in this Agreement, the provisions of this Agreement are for the exclusive benefit of the City, the Developer and their respective permitted successors and assigns and not for the benefit of any third person. This Agreement shall not be deemed to have conferred any rights upon any third person.

17.2 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

17.3 Construction. The section headings throughout this Agreement are for convenience and reference only and the words contained in them shall not be held to expand, modify, amplify or aid in the interpretation, construction or meaning of this Agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identification of the person or persons, firm or firms, corporation or corporations may require. The locative adverbs "herein", "hereunder", "hereto", "hereby", "hereinafter", etc., whenever the same appear herein, mean and refer to this Agreement in its entirety and not to any specific section or subsection hereof.

17.4 Fair Construction. The Parties acknowledge and agree that each was properly represented by counsel, and that this Agreement was negotiated and drafted at arm's length so that the judicial rule of construction to the effect that a legal document shall be construed against the draftsman shall be inapplicable to this Agreement.

17.5 Authority to Execute Agreement. The parties represent to each other that they possess sufficient and requisite jurisdiction and authority to enter into this Agreement.

17.6 Attorney's Fees. If any party brings suit to enforce or declare the meaning of any provision of this Agreement, the prevailing party, in addition to any other relief, shall be entitled to recover its reasonable attorneys' fees and costs, including any incurred on appeal.

17.7 Survival. The provisions of this Agreement shall survive the expiration of the term of this Agreement to the extent involving environmental indemnification, maintenance of the Public Plaza or 120th Avenue NE, or other matters involving rights or obligations extending beyond the expiration of the term of this Agreement.

17.8 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Washington. Venue for any legal action pertaining to this Agreement shall be in the State of Washington with jurisdiction in King County, Washington.

17.9 Amendment. No modification or amendment of this Agreement may be made except by written agreement signs by each of the Parties to this Agreement or as may be provided otherwise in this Agreement.

17.10 Notices. All notices which may be or are requested to be given, pursuant to this Agreement, shall be deemed given when hand delivered, delivered by facsimile, or when deposited in the United States Mail, postage prepaid, and marked registered or certified mail, return receipt requested, and addressed to the Parties at the following addresses unless otherwise provided for herein:

To The City:	City of Kirkland Attention: Planning Director 123 Fifth Avenue Kirkland, WA 98033-6189 Facsimile (425) 803-2859
AND TO:	City of Kirkland Attn: City Attorney 123 Fifth Avenue Kirkland, WA 98033-6189 Facsimile (425) 587-3025
To Developer:	Coventry II DDR Totem Lake, LLC Attn: Charles Worsham 3300 Enterprise Parkway Beachwood, OH 44122 Facsimile (216) 755-1887
AND TO:	Coventry II DDR Totem Lake LLC Attn: General Counsel 3300 Enterprise Parkway Beachwood, OH 44122 Facsimile (216) 755-1678

Either Party shall have the right to change the address or contact information for notice purposes at any time during the term of this Agreement upon prior written notification to the other Party.

17.11 Incorporation by Reference. All exhibits and appendices annexed hereto are hereby incorporated by reference herein.

17.12 No Joint Venture. This Agreement is not intended to, and nothing in this Agreement shall create, any partnership, joint venture or other arrangement between the Developer and the City.

17.13 Entire Agreement. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings between the Parties relating to the subject matter hereof, including, but not limited to the Memorandum of Understanding.

17.14 Waiver. The waiver by one Party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such Party

of any other covenant, condition, or promise hereunder. The waiver by either or both Parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided by law or the provisions of this Agreement shall not exclude other consistent remedies unless they are expressly excluded.

17.15 Exculpation. Notwithstanding anything contained to the contrary in any provision of this Agreement, it is specifically agreed and understood that there shall be absolutely no personal liability on the part of any individual officers or directors of the City or the Developer with respect to any of the obligations, terms, covenants, and conditions of this Agreement; and each Party shall look solely to the other Party or any such assignee or successor in interest for the satisfaction of each and every remedy available to a Party in the event of any breach by the other Party or by any such assignee or successor in interest of any of the obligations, terms, covenants, and conditions of this Agreement to be performed by a Party, such exculpation of personal liability to be absolute and without any exception whatsoever.

17.16 Recording. Upon the mutual consent of the City and the Developer, a memorandum of this Agreement may be recorded by the Developer or the City with the Real Property Records Division of the King County Records and Elections Department; provided, however, that this Agreement shall not be recorded.

17.17 Binding Effect. The terms herein contained shall bind and inure to the benefit of the City, its successors and assigns, and of the Developer, its successors and assigns, except as may be otherwise provided herein.

17.18 Counterparts. This Agreement may be executed in any number of counterparts and all counterparts shall be deemed to constitute a single agreement. The execution of one counterpart by a Party shall have the same force and effect as if that Party had signed all other counterparts. Executed copies of this Agreement delivered by facsimile transmission shall be deemed an original signed copy of this Agreement.

17.19 Time is of the Essence. For the purposes of this Agreement and all transactions contemplated thereunder, time is of the essence.

17.20 Term and Termination. Subject to the survival provisions set forth in Section 17.7, the term of this Agreement is ten (10) years from the date signed by all Parties.

CITY OF KIRKLAND

By: _____

Its: _____

COVENTRY II DDR TOTEM LAKE, LLC

By: _____

Its: _____

STATE OF WASHINGTON)
) ss
COUNTY OF _____)

I certify that I know or have satisfactory evidence that David Ramsay is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the City Manager of City of Kirkland, Washington to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

_____
(Signature of Notary)

_____
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____
My appointment expires _____

STATE OF_____)
) ss
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 signed this instrument, on oath stated that he was authorized to execute the instrument as the _____ on behalf of Coventry II DDR Totem Lake LLC, a Delaware limited liability company, pursuant to the provisions of the Limited Liability Company Agreement of said company, and acknowledged it to be the free and voluntary act of said company for the uses and purposes mentioned in the instrument.

DATED: _____

_____
(Signature of Notary)

_____
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of _____,
residing at _____
My appointment expires _____

EXHIBITS TO REDEVELOPMENT AGREEMENT

EXHIBIT A	Legal Description of Property
EXHIBIT B	SEPA Based Mitigation Conditions
EXHIBIT C	Public Plaza and 120th Avenue NE Design Standards
EXHIBIT D	Easements, Covenants, Conditions and Restrictions – Public Plaza
EXHIBIT E	Form of Public Plaza Lease
EXHIBIT F	Form of City Garage Unit Lease

EXHIBIT A

Legal Description of Property

PARCEL A:

THAT PORTION OF TRACT B OF PUGET SOUND CENTER, AS PER PLAT RECORDED IN VOLUME 92 OF PLATS, PAGES 95 AND 96, RECORDS OF KING COUNTY, ACCORDING TO THE CORRECTION MAP THEREOF recorded under Recording No. 71O5100304, LYING SOUTH OF THE SOUTH LINE AND SAID SOUTH LINE EXTENDED EASTERLY OF THAT TRACT OF LAND CONVEYED TO THE STATE OF WASHINGTON by DEED RECORDED UNDER KING COUNTY RECORDING NO. 4569596 AS SHOWN ON SAID PLOT OF PUGET SOUND CENTER;

EXCEPT MAT PORTION THEREOF CONVEYED TO THE CITY OF KIRKLAND UNDER KING COUNTY RECORDING NO. 8507250580;

AND EXCEPT THOSE PORTIONS THEREOF CONVEYED TO THE STATE OF WASHINGTON BY DEEDS recorded under Recording NOS. 8911150820 AND 9007022009;

AND EXCEPT THAT PORTION COMMENCING AT THE SOUTHWEST CORNER OF LOT “B” AS DEPICTED ON THAT SURVEY RECORDED IN VOLUME 5 OF SURVEYS AT PAGE 60 UNDER AUDITOR’S FILE NO. 7510220689,
RECORDS OF KING COUNTY, WASHINGTON;
THENCE SOUTH 89°56’25” EAST ALONG THE SOUTH LINE OF SAID LOT “B” A DISTANCE OF 52.25 FEET TO THE POINT OF BEGINNING;
THENCE CONTINUING SOUTH 89°56’25” EAST ALONG SAID SOUTH LINE A DISTANCE OF 126.72 FEET;
THENCE SOUTH 80°29’33” WEST A DISTANCE OF 97.43 FEET;
THENCE SOUTH 84°12’39’ WEST A DISTANCE OF 27.40 FEET;
THENCE NORTH 10°10’36’ WEST A DISTANCE OF 19.02 FEET TO THE POINT OF BEGINNING;

being also described as follows:
beginning at the most westerly northwest corner of said tract b;
thence north 89°56’25” east a distance of 363.09 feet;
THENCE SOUTH 10°10’36” EAST A DISTANCE OF 19.02 FEET;
THENCE NORTH 84°12’39” EAST A DISTANCE OF 27.40 FEET;
THENCE NORTH 80°29’33” EAST A DISTANCE OF 97.43 FEET;
THENCE NORTH 89°56’25” EAST A DISTANCE OF 117.13 FEET;
thence along the arc of a 342.16 foot radius non-tangent curve to the left the center of which bears north 71°19’11” east through a central angle of 14°28’27”, a distance of 86.44 feet;
thence south 33°09’16” east a distance of 606.00 feet;
thence along the arc of a 415.00 foot radius tangent curve to the right through a central angle of 50°58’49”, a distance of 369.26 feet;
thence south 17°49’33” west a distance of 19.82 feet;
thence north 72°10’27” west a distance of 16.00 feet;
thence south 17°49’33” west a distance of 109.00 feet;
thence south 21°34’39” west a distance of 61.13 feet;
thence south 21°25’51” west a distance of 58.85 feet;
thence along the are of a 49.00 foot radius non-tangent curve to the right the center of which bears north 65°34’46” west through a central angle of 83°03’31”, a distance of 71.03 feet;
thence along the arc of a 1210.92 foot radius non-tangent curve to the right the center of which bears north 22°25’27” east through a central angle of 01°01’46”, a distance of 21.76 feet;
thence along the arc of a 300.00 foot radius non-tangent Curve to the left the center of which bears south 47°10’08” west through a central angle of 28°22’36”, a distance of 148.58 feet;
thence north 71°12’28” west a distance of 90.62 feet;
thence along the arc of a 1216.92 foot radius non-tangent curve to the right the center of which bears north 34°36’19” east through a central angle of 34°50’52”, a distance of 740.14 feet;
thence north 20°32’49” west a distance of 535.94 feet to the point of beginning;

SITUATE IN THE CITY OF KIRKLAND, COUNTY OF KING, STATE OF WASHINGTON.

PARCEL B:

THAT PORTION OF TRACT C OF PUGET SOUND CENTER, AS PER PLAT RECORDED IN VOLUME 92 OF PLATS, PAGES 95 AND 96, RECORDS OF KING COUNTY, ACCORDING TO THE CORRECTION MAP THEREOF recorded under Recording No. 7105100304; AND LOTS G1 AND G2 OF CITY OF KIRKLAND'S SHORT PLAT NO. 76-9-9 AS FILED UNDER KING COUNTY RECORDING NO. 7612010652, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID TRACT G, SAID PLAT OF PUGET SOUND CENTER;
THENCE NORTH 89°56'25" EAST 576.34 FEET ALONG THE NORTHERLY LINE THEREOF;
THENCE SOUTH 07°30'00" EAST 157.00 FEET;
THENCE SOUTH 24°05'38" EAST 139.78 FEET;
THENCE SOUTH 40°43'34" EAST 199.25 FEET;
THENCE NORTH 88°51'15" EAST 100.02 FEET,
THENCE SOUTH 66°02'15" EAST 147.73 FEET;
THENCE SOUTH 76°38'19" EAST 122.95 FEET;
THENCE SOUTH 11°30'00" WEST 10.00 FEET TO THE SOUTHERLY LINE OF SAID TRACT G;
THENCE WESTERLY 122.60 FEET (CENTRAL ANGLE 46°49'44") along the arc of a circular curve, said curve having a radius of 150.00 feet which bears north 11°30'00" east from the curve enter to the curve beginning;
thence south 54°40'16" west 426.21 feet to the southwesterly corner of that parcel of land described In the deed recorded under Recording No. 7312200264;
thence north 33'09'16" west, along the easterly line of said parcel, 149.70 feet;
thence south 56°50'44" west, along the northerly line or said parcel, 192.24 feet to the easterly margin of 120th avenue northeast and the arc of a curve to the left having a radius of 465.00 feet whose center bears south 71°03'44" west;
thence northerly along said margin and curve through a central angle of 14°13'00" an arc distance of 115.38 feet;
thence north 33°09'16" west, along said margin, 159.80 feet to the southwesterly corner of that parcel of land described in the deed recorded under Recording NO. 7310010602;
thence north 56°50'44" east, along the southerly line of said parcel, 195.32 feet;
thence north 33°09'16" west, along the easterly line of said parcel, 128.00 feet;
thence south 56°50'44" west, 195.32 feet to the easterly margin of 120th avenue northeast;
thence north 33°09'16" west, along said margin, 318.20 feet to the beginning of a curve to the right having a radius of 292.16 feet;
thence northerly along said curve through a central angle Of 35°00'00" an arc distance of 178.47 feet;
thence north 01°50'44" east, along said margin, 0.83 feet to the POINT OF BEGINNING;
together with an easement for a covered walkway over that portion of tract c, Puget sound center, as recorded in volume 92 of plats, pages 95 and 96, records of king county Washington, and amended by the correction map thereof recorded under king county auditor's file no. 7105100304, the boundary of which is described as follows:

beginning at the northwest corner of tract g of said map;
thence south 01°50'44" west a distance of 0.83 feet;
thence along the arc of a 292.16 foot radius tangent curve to the left through a central angle of 35°00'00"; a distance of 178.47 feet;
thence south 33°09'16" east a distance of 318.20 feet to the true point of beginning;
thence north 56°50'44" east a distance of 195.32 feet;
thence south 33°09'16" east a distance of 20.00 feet;
thence south 56°50'44" west a distance of 195.32 feet;
thence north 33°09'16" west a distance of 20.00 feet to the true point of beginning;
TOGETHER WITH EASEMENTS FOR INGRESS, EGRESS AND UTILITIES, PARKING, RESTRICTIONS AND COVENANTS AND OTHER RECIPROCAL RIGHTS AS CONTAINED IN INSTRUMENTS RECORDED UNDER RECORDING NOS. 7310010602 AND 7312200264;

SITUATE IN THE CITY OF KIRKLAND, COUNTY OF KING, STATE OF WASHINGTON.

EXHIBIT B

SEPA Based Mitigation Conditions

The following mitigation measures shall be required at the building permit stage of the appropriate phase of the project:

1. Reconstruct the south driveway off 120th Avenue NE to right-turn in and out by constructing c-curbing on 120th Avenue NE.

2. Enter into an agreement not to contest the installation of c-curbing to restrict left-turns in and out of the south driveway off Totem Lake Boulevard.

3. Install traffic signals at the intersection of 120th Avenue NE/Totem Lake Way and 120th Avenue NE/Public Plaza (new east-west street through the development).

4. Configure on-street parking stalls along the new central boulevard of the Public Plaza that ensures safety to pedestrians, cyclists, and other vehicles. The configuration and design of the on-street parking stalls shall be subject to review and approval by the City.

5. Provide a Transportation Management Program (TMP) to be reviewed and approved by the City prior to approval of a building permit for the office building. Components of the TMP shall include one or more of the following: bus shelter, connection to the transit center, transit information center, parking management, bicycle facilities, etc.

EXHIBIT C

Public Plaza and 120th Avenue NE Design Standards

1. General standards

The Public Plaza Improvements and the 120th Avenue NE Improvements shall be constructed in accordance with the applicable provisions of the KMC and the KZC and the Public Works Department 2005 Pre-Approved Plans; provided, however, that (1) the City and the Developer may mutually agree otherwise; (2) the Design Review Board may approve plans and specifications that deviate from these standards; and (3) that the following standards shall prevail in the event of a conflict between such provisions and the following standards.

2. Paving

a. Pedestrian Specialty Paving: Shall be colored concrete. Scoring and/or stamping shall divide pavement into sections. The size of sections may vary, but generally shall not be greater than 16 square feet.

b. Vehicular Specialty Paving: Shall be colored concrete. Scoring and/or stamping shall divide pavement into sections. The size of sections may vary, but generally shall not be greater than 16 square feet.

c. Accent pavers: Paving may be accented by decorative pavers or brick.

3. Amenities

a. Benches: Shall be minimum 6' length, commercial grade, consisting of a rustproof frame and seat made of powder-coated steel, aluminum or cast iron.

b. Seatwalls: Shall be 12-20" high and 12-24" wide consisting of architecturally finished concrete or other durable, permanent material. Seatwalls shall incorporate skateboard deterrents.

c. Tree Grates: Shall be cast iron, aluminum or powder coated steel minimum 5'x5'. Grates shall have knockouts to allow for tree growth. Grates shall be installed flush with surrounding pavement.

d. Flower Pots: Concrete, ceramic or composite material. Frost proof with drainage holes. Minimum 24" height and 24" diameter.

e. Water Features:

i. East plaza vehicle turnaround: Shall be a feature with moving water located in the central island in the vehicle turnaround. The feature shall serve to visually terminate the east end of the plaza and be at a scale appropriate to its vehicular orientation.

ii. 120th and plaza intersection: Shall be a feature with moving water integrated into the plaza development at the intersection. The feature shall incorporate seating and be at a pedestrian scale.

f. Bollards: Shall be removable, ornamental, rustproof cast iron, aluminum, or powder coated steel. Bollards shall incorporate lighting.

g. Lighting: Shall be decorative post lights located a maximum of 60' on center. Luminaries shall be cut-off type to avoid glare.

h. Public Art: Shall be incorporated into the Public Plaza Improvements and the 120th Avenue NE Improvements as a component of another element or as a freestanding object. The Developer shall consult periodically with the Kirkland Cultural Council to determine potential artists and art opportunities.

i. Trash Cans: Shall be ornamental and made of rustproof powder-coated steel, aluminum or cast iron.

j. Bike Racks: Shall be provided. The design of the bike racks shall compliment the design of other site amenities.

4. Landscape

a. Trees: Shall be minimum 2 ½" caliper. Medium sized trees shall be selected for planting in tree grates and larger trees to accent intersections where space permits in in-ground planters.

b. Shrubs and Groundcover: In-ground planters shall be planted with a mix of deciduous and evergreen plants suitable to the climate and urban conditions.

c. Accent Plantings: Flower pots shall be planted with woody and herbaceous plants on a seasonal replacement schedule to provide year-round interest.

5. Irrigation: An automatic water-conserving irrigation system shall be installed to serve all new plantings.

6. Other

a. Site amenities shall be designed and selected to form a coordinated family, by repetition of materials, colors and/or forms.

b. Alternative materials may be approved by the City Planning Director.

EXHIBIT D

Easement, Covenants, Conditions and Restrictions Relating to Public Plaza

The easements, covenants, conditions and restrictions contained herein and benefiting the Developer, shall control and supersede any inconsistent provisions of the Kirkland Municipal Code, including, but not limited to, the provisions of KMC Chapter 19.04, as may be subsequently amended, modified, changed or replaced, and shall be deemed to also accrue for the benefit the Developer's tenants, licensees, invitees, successors and assigns, and shall be deemed perpetual and shall be construed to run with the land; provided, however, that whenever any "consent" is required, only the Developer, or its successors and assigns shall be required or entitled to provide such consent.

I. RESERVATION OF EASEMENTS.

1. The Developer reserves a perpetual non-exclusive easement, for the benefit of itself, its tenants, licensees, invitees, successors and assigns, over, under through and across the Public Plaza for ingress, egress and pedestrian access to and from the Public Plaza to the Property consistent with customary practices and operations of open-air shopping centers in the Pacific Northwest.

2. The Developer reserves a perpetual non-exclusive easement, for the benefit of itself, its tenants, licensees, invitees, successors and assigns, over, under through and across the Public Plaza for use, placement, maintenance, repair, replacement, relocation and/or removal of any utilities or drainage facilities within the Public Plaza that serve the Property.

3. The Developer reserves a perpetual non-exclusive easement, for the benefit of itself, its tenants, licensees, invitees, successors and assigns, over, under through and across the sidewalks within the Public Plaza for the purpose of sidewalk and outdoor sales, displays of merchandise and/or conduct of other business and uses consistent with customary practices and operations of open-air shopping centers in the Pacific Northwest, so long as the continuous width of unobstructed sidewalk along the curb is at least eight (8) feet in width.

4. The Developer reserves a perpetual non-exclusive easement, for the benefit of itself, its tenants, licensees, invitees, successors and assigns, over, under through and across those portions of the Public Plaza within ten feet (10') of any buildings or structures on the Property for installation, placement, use and maintenance of awnings, signage (in accordance with an approved Master Signage Plan), light fixtures for illumination of the storefronts and buildings within the Property, items attached to buildings or overhanging the Public Plaza, and other fixtures associated with the buildings on the Property, so long as pedestrian passage is not unreasonably obstructed.

5. The Developer reserves a perpetual non-exclusive easement, for the benefit of itself, its tenants, licensees, invitees, successors and assigns, over, under through and across the Public Plaza for ingress, egress and maintenance of the Public Plaza consistent with the obligations and maintenance duties of the Developer set forth in the Development Agreement

between the City and the Developer, dated January __, 2006, a copy of which can be obtained from the City.

II. COVENANTS, CONDITIONS AND RESTRICTIONS.

1. Except as incident to the Developer's use of the adjoining Property: (A) the Public Plaza shall be used exclusively for public purposes and activities of a nature and in a manner consistent with customary practices and operations of open-air shopping centers in the Pacific Northwest; and (B) no business, retail, office or commercial uses shall be allowed within the Public Plaza without the advance prior written consent of the Developer, which consent may be withheld at the Developer's sole discretion, including, but not limited to, street vendors; retail kiosks; espresso or coffee carts or stands; taverns, bars, nightclubs, discotheques or any similar establishment; bowling alleys; theatres; health clubs or spas; service stations or automobile repair facilities; schools; public markets, open-air markets, farmer's markets or similar activities; car washes; dry cleaning or laundry facilities, adult type bookstores or other establishments selling, displaying or exhibiting pornographic materials or providing adult type entertainment or displays of a variety involving or depicting nudity or lewd acts; massage parlors; skating rinks; or mortuaries.

2. Except as incident to the Developer's use of the adjoining Property, no barriers, fences, grade changes or other obstructions of the Public Plaza shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic between the Public Plaza and the Property, or in any manner unreasonably restrict or interfere with the use and enjoyment of the Property by the Developer. The preceding sentence shall not prohibit the City from temporarily closing or blocking vehicular traffic on the Public Plaza for a reasonable period of time as necessary for (A) "events" contemplated in the Development Agreement between the City and the Developer, dated January __, 2006 (a copy of which can be obtained from the City), or (B) reasonable traffic regulation and control, or for maintenance, improvement or repair of roadways, streets, sidewalks or other improvements located within the Public Plaza.

3. All utilities installed and located within the Public Plaza shall be underground if reasonably possible, except for manhole and manhole covers, which shall be flush with the adjacent grade.

4. Hazardous materials shall not be used, or permitted to be used, on, about, under or in the Public Plaza except at all times in compliance with applicable federal, state and local environmental statutes, ordinances, rules and regulations.

5. After initial construction of the Public Plaza Improvements, no changes or alterations that will substantially change the appearance of the Public Plaza, and no buildings or other structures, shall be made or constructed in the Public Plaza without the advance written consent of the Developer, which consent may be withheld at the Developer's sole discretion.

6. The streets and roadways within the Public Plaza shall not be changed or deleted without the advance written consent of the Developer, which consent shall not be unreasonably withheld.

7. Except in an emergency, no street, roadway or utility improvements, installation, maintenance or repairs that will interfere or obstruct the free flow of pedestrian and vehicular traffic over the streets, roadways or sidewalks within the Public Plaza shall be commenced or maintained between November 30 and January 4, nor without thirty (30) days advance written notice to all businesses located on the Property affected by the same.

EXHIBIT E

Form of Public Plaza Lease*

LEASE WITH OPTION TO PURCHASE AND PROPERTY TRANSFER AGREEMENT
by and among

COVENTRY II DDR TOTEM LAKE, LLC
and the
CITY OF KIRKLAND, WASHINGTON

THIS LEASE WITH OPTION TO PURCHASE AND PROPERTY TRANSFER AGREEMENT ("Lease") is made as of this _____ day of _____, 200__, by and among Coventry II DDR Totem Lake, LLC (the "Developer"), a Delaware limited liability company, as Lessor, and the City of Kirkland, a code city of the state of Washington (the "City"), as lessee.

W I T N E S S E T H:

1. The Developer owns approximately 26 acres of real property, commonly known as the Totem Lake Mall (the "Mall"), located in the City, as more fully described in the Development Agreement.

2. The Mall has been recognized as an under-performing property in need of redevelopment. The City has identified the Mall as a regional "Urban Center" by the Kirkland Comprehensive Plan and King County Countywide Planning Policies. The City has recognized the Mall as an under-performing property in need of redevelopment, to strengthen its role as a retail center and community gathering place.

3. The Developer and the City have entered into a Redevelopment Agreement for Totem Lake Mall, dated _____, 2006 (the "Agreement") under which the Developer has pursued the redevelopment of the Mall, which includes extensive demolition, reconfiguration and construction of buildings and improvements, with the completed Mall to be comprised of approximately 1,013,600 square feet of retail and office space, residential units, a cinema, and several parking structures. The redevelopment is contemplated to occur over ten years in several phases, with anticipated completion of the retail components within five years, and anticipated completion of the office and residential components within seven years.

4. Public use and enjoyment of the Mall is enhanced by creation of public spaces, consisting of a new east-west public plaza that will function as a public park, parkway or plaza ("Public Plaza"), improvement of 120th Avenue NE consistent with the new Public Plaza, and the development of public parking. These improvements help create a regional public gathering place and improve transportation and circulation.

5. Use of the public spaces and the reduction of traffic congestion is facilitated by City acquisition of parking facilities in the parking structure in the upper portions of the Mall.

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* To be adjusted for Lower Mall Public Plaza Improvements and for Upper Mall Public Plaza Improvements.

The Developer has constructed and will now lease to the City, with an option to purchase, a condominium unit representing a portion of the parking structure ("City Garage Unit").

6. The Developer has undertaken significant responsibilities and risks associated with developing and constructing the parking structure and Public Plaza, together with obligations regarding the maintenance of those facilities.

7. The Agreement is authorized by RCW 36.70B.170 through 36.70B.210, and this lease of the Public Plaza is authorized by Chapter 35.42 RCW.

8. In consideration of the Developer designing and building the Public Plaza[, granting the easements,]] and providing other valuable consideration, the City has deemed it to be in the best interest of the City to lease with an option to purchase the Public Plaza from the Developer.

9. The City determined that the value of the physical assets to be leased by the City significantly outweigh the amount to be invested by the City by leasing the improvements.

10. By Ordinance No. _____, the City authorized the execution of this Lease.

11. The Public Plaza has been constructed at no cost to the City.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions hereinafter contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following terms shall have the respective meanings set forth below for all purposes of this Agreement.

"Developer Contract" means any contract, agreement or license, written or oral, to which the Developer, its Contractor(s) or subcontractors or their respective agents and employees is a party in connection with the construction of the Public Plaza.

"Escrow Holder" means _____.

"Exercise Notice" means written notice, provided to the Lessor in accordance with Section 3.13(b), of the City's election to exercise the Option.

"Lease" means this Lease with Option to Purchase and Property Transfer Agreement.

"Lease Transfer Date" means _____.

"Leasing Date" means the date of this Lease.

"Option" means the irrevocable, exclusive option to purchase the Public Plaza granted to the City in Section 3.13 of this Lease.

"Option Term" has the meaning given in Section 3.13(a) of this Lease.

"Public Plaza means the land and improvements which are located perpendicular to 120th Avenue N.E. and which are more specifically described in Exhibit A, which is incorporated herein by reference.

"Purchase Price" means the price identified in Section 3.13(c) of this Lease.

All other capitalized terms used and not otherwise defined in this Lease shall have the meanings assigned them in the Agreement.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.1 The Developer represents and warrants as follows:

(a) *Authority*. The Developer is authorized to enter into this Lease and the lease created hereunder (the "Lease") and to convey the Public Plaza, and the person executing this Lease on behalf of the Developer is authorized to do so.

(b) *Title*. The Developer owns the Public Plaza, as more particularly described in Exhibit A to this Lease and by this reference incorporated herein[, subject only to the exceptions set forth in Exhibit B, attached hereto and by this reference incorporated herein].

(c) *Substantial Completion of Public Plaza*. The Public Plaza has reached Substantial Completion and is being maintained in accordance with the Agreement.

(d) *Notice*. The Developer has designated the Leasing Date consistent with the requirements of the Agreement.

(e) *Encumbrances*. As of the Leasing Date, the Public Plaza has been reconveyed from any lien created in connection with any of Developer's loan documents, and all security interests in the Public Plaza under any such loan documents have been terminated and evidence thereof has been deposited with the Escrow Holder.

(f) *Claims*. Having conducted a reasonable investigation, as of the Leasing Date, the Developer certifies that the Public Plaza is free and clear of any mortgage, lien, demand, invoice, obligation, penalty, charge, expense, claim, or dispute that may ripen into a claim of any kind whatsoever (including without limitation claims regarding death, injury, sickness, or property damage) of which the Developer is or should be aware after such investigation, arising by or through the actions of the Developer, its Contractor(s) or subcontractors or their respective agents and employees[, except as disclosed in Exhibit C to this Lease].

(g) *Escrow*. The Developer has deposited with the Escrow Holder all documents and funds required to be so deposited by the Developer under the Agreement.

(h) *No Default*. The Developer is not in default under the Agreement or any loan documents. The Developer has complied with all provisions applicable to it under the Agreement and any such loan documents.

(i) *No Contracts*. There are no contracts, agreements, or licenses, written or oral, to which the Developer, its Contractor(s) or subcontractors or their respective agents and employees is a party ("the Developer Contracts"), affecting the maintenance or use of the Public Plaza, nor are there any other the Developer Contracts permitting or requiring any Person to maintain or use the Public Plaza, that will survive the lease with option to purchase of the Public Plaza to the City on the Leasing Date, other than those the Developer Contracts described in a certificate of the Developer of even date delivered to the City, and all parties to the Developer Contracts other than those described in such certificate have been notified that such the Developer Contracts will not survive the lease with option to purchase of the Public Plaza to the City.

2.2 City Representations and Warranties. The City represents and warrants as follows:

(a) *Authority*. The City is authorized to enter into this Lease, and the person executing this Lease on behalf of the City is authorized to do so.

(b) *Escrow*. The City has deposited with the Escrow Holder all documents and funds required to be so deposited by the City under the Agreement.

(c) *No Default*. The City is not in default under the Agreement. As of the Leasing Date, the City has complied with all provisions applicable to it under the Agreement.

ARTICLE 3. LEASE

3.1 Creation of Lease. The Lessor hereby leases to the City the Public Plaza upon the terms and conditions set forth in this Lease. This Lease shall commence on the Leasing Date, and shall terminate on [not to exceed 25] years from Leasing Date unless earlier terminated in accordance with the terms and provisions of this Lease or the Agreement.

3.2 Possession. From and after the Leasing Date, the City may have possession and use of the Public Plaza for use as a public park, parkway or plaza open to the public and all uses incidental thereto.

3.3 Quiet Enjoyment. The City, upon fully complying with and promptly performing all of the terms, covenants and conditions of this Lease on its part to be performed, shall have and quietly enjoy the Public Plaza for the term of this Lease.

3.4 Rental Payments.

(a) *Components*. The principal component of the rental payments is set forth in Exhibit D-1 to this Lease and by this reference incorporated herein. The aggregate principal component of the rental payments shall equal the Lease Transfer Amount. The interest component of the rental payments, representing interest on the principal component of the rental payments, together with the amortization of the principal component, is set forth in Exhibit D-2 to this Lease and by this reference incorporated herein.

(b) *Pledge*. The City shall make all rental payments at the times and in the amounts set forth in Exhibit D-2. The obligation of the City to make rental payments constitutes a limited tax general obligation of the City. The City hereby pledges irrevocably to include in its budget and levy taxes annually, within the constitutional and statutory limitations provided by law without a note of the electors of the City, on all of the taxable property within the City in an amount sufficient, together with other money legally available and to be used therefor, to pay when due the rental payments. The full faith, credit and resources of the City are irrevocably pledged for the annual levy and collection of such taxes and the prompt payment of the rental payments.

(c) *Tax Exemption*. The Lessor and the City intend that the interest component of the rental payments hereunder shall be excluded from gross income for federal income tax purposes. The Lessor and the City hereby each covenant that they will not make any use of the Public Plaza that would cause this Lease [or the Certificates of Participation] to be treated as an "arbitrage bond" within the meaning of Section 148(a) of the Code at the time of such use. The City shall comply with the applicable requirements of Section 148(a) of the Code and the applicable regulations thereunder throughout the term of the Lease. The Lessor and the City each covenant that they will not act or fail to act in a manner that will cause the Lease [or the Certificates of Participation] to be considered an obligation not described in Section 103(a) of the Code. The Lessor and the City each further covenant that they will take no actions that would cause the Lease or the Certificates of Participation to be treated as a "private activity bond" as defined in Section 141 of the Code then in effect.

(d) *Additional Rent*. During the term of this Lease, the City shall pay as additional rent [trustee's fees and expenses in connection with the issuance of Certificates of Participation] and all taxes and assessments on the Property Interests for which the City is liable. Due to the contingent nature of such additional rent, it shall not constitute debt of the City for purposes of debt limitations established by RCW 39.36.020.

(e) *Defeasance*. In the event that money and/or "Government Obligations," as now or hereafter be defined in Chapter 39.53 RCW, maturing at such time or times and bearing interest to be earned thereon in amounts sufficient to pay or prepay all rental payments due under this Lease in accordance with the terms of this Lease, are irrevocably set aside and pledged in a special account to effect such payment or prepayment, then no further payments need be made of any rental payments under this Lease, and the Lessor shall not be entitled to any lien, benefit or security in the Public Plaza, except the right to receive the funds so set aside and pledged.

(f) *Prepayment*. The City may prepay the principal component of the rental payments, in $5,000 increments, in whole or in part, on any date. The City shall give notice of any such prepayment to the Lessor in writing not less than three (3) days in advance of the intended prepayment date [and not less than sixty (60) days if Certificates of Participation have been issued]. Upon such prepayment, the term of this Lease shall be deemed modified such that this Lease terminates on the payment date for the last outstanding rental payment not prepaid.

3.5 Absolute Net Lease. This Lease is an "absolute net lease." As between the City and the Lessor, the City assumes the sole responsibility, and the Lessor shall have no responsibility, for the condition, use, maintenance and repair of the Public Plaza after the

Leasing Date. The City will, at its cost and expense, keep and maintain the Public Plaza in good repair and condition, reasonable wear and tear and ordinary use excepted. Nothing in this Section 3.6 shall diminish any of the City's rights under warranties received pursuant to the Agreement.

3.6 Lease Nonterminable. Except as otherwise expressly provided in this Lease, this Lease shall not terminate, nor shall the City have any right to terminate this Lease or to be released or discharged from any obligations or liabilities hereunder for any reason, including without limitation damage or destruction of the Public Plaza, it being the intention of the parties hereto that all rental payments payable by City hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. In that connection, City hereby waives, to the extent permitted by applicable law, any and all rights that it may now have or that may at any time hereafter be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms of this Lease and agrees that if, for any reason whatsoever, this Lease shall be terminated in whole or in part by operation of law or otherwise except as specifically provided in this Lease, the City nevertheless will pay to the Lessor an amount equal to each rental payment at the time such payment would have become due and payable in accordance with the terms hereof had such termination not occurred.

3.7 Default. In the event that (a) the City falls to make when due any rental payments or additional rent payments or (b) the City defaults in the performance or observance of any of the other terms, covenants, conditions or agreements of this Lease, which default is not cured within thirty (30) days after written notice and demand, or if such default shall be of such a nature that the same cannot practicably be cured within said thirty (30) day period and City shall not within said thirty (30) day period commence with due diligence and dispatch the curing and performance of such defaulted term, covenant, condition or agreement, or if City shall within said thirty (30) day period commence with due diligence and dispatch to cure and perform such defaulted term, covenant, condition or agreement and shall thereafter fail or neglect to prosecute and complete with due diligence and dispatch the curing and performance of such defaulted term, covenant, condition or agreement; then and in any such case, at the Lessor's option and in addition to all other rights or remedies the Lessor may, following the expiration of the cure period, if any, provided herein for such default, immediately declare the City's rights under this Lease terminated, and re-enter the Public Plaza, using such force as may be necessary, and repossesses itself thereof, as of its former estate, and remove all persons and property from the Public Plaza. Notwithstanding any such re-entry, the liability of the City for the rental payments at such times and in such amounts provided for herein by Exhibit D-1 and D-2 shall not be extinguished for the balance of the term of this Lease.

3.8 Compliance with Laws. The City shall at all times during the term of this Lease at the City's own cost and expense, perform and comply with all laws, rules, orders, ordinances, regulations and requirements, now or hereafter enacted or promulgated, of every government and municipality having jurisdiction over the Public Plaza and of any agency thereof, relating to the Public Plaza, whether or not such laws, rules, orders, ordinances, regulations or requirements so involved shall necessitate structural changes, improvements, interference with use and enjoyment of the Public Plaza, and the City shall so perform and comply, whether or not such laws, rules, orders, ordinances, regulations or requirements shall now exist or shall hereafter be enacted or

promulgated, and whether or not such laws, rules, orders, ordinances, regulations or requirements can be said to be within the present contemplation of the parties hereto.

3.9 City's Right to Contest. The City shall have the right to contest, by appropriate legal proceedings, any tax, charge, levy, assessment, lien or other encumbrance, and/or any law, rule, order, ordinance, regulation or other governmental requirement affecting the Public Plaza, and to postpone payment of or compliance with the same during the pendency of such contest, provided that: (a) the City shall not postpone the payment of any such tax, charge, levy, assessment, lien or other encumbrance for such length of time as shall permit the Public Plaza, or any lien thereon created by such item being contested, to be sold by any federal, state, county or municipal authority for the non-payment thereof, (b) the City shall not postpone compliance with any such law, rule, order, ordinance, regulation or other governmental requirement if the Lessor will thereby be subject to criminal prosecution, or if any municipal or other governmental authority shall commence a process according to applicable law to carry out any act to comply with the same or to foreclose or sell any lien affecting all or part of the Public Plaza which shall have arisen by reason of such postponement or failure of compliance; (c) the City shall proceed diligently and in good faith to resolve such contest; (d) such contest shall be in compliance with all laws, rules, orders, ordinances, regulations or other governmental requirements; and (e) the City shall not postpone compliance with any such laws, rules, orders, ordinances, regulations or other governmental requirements if the same shall invalidate any insurance required by this Lease.

3.10 Liability Insurance. During the term of this Lease, the City shall maintain, or cause to be maintained, in full force and effect, comprehensive public general liability insurance covering the Public Plaza in such amounts as may be established by the City from time to time. The City may provide all or a portion of any insurance by self insurance. It is understood that this insurance covers any and all liability of the City and its officers, employees and agents, and the procurement thereof does not constitute a waiver of the defense of governmental immunity.

3.11 Liens. The City shall not create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Public Plaza. The City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The City shall reimburse the Lessor for any expense incurred by Lessor (including reasonable attorneys' fees) to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim incurred by the City.

3.12 Option to Purchase. The Lessor hereby grants the City an irrevocable, exclusive option to purchase the Public Plaza ("Option") from the Lessor pursuant to the following terms.

(a) *Term*. The term of the Option ("Option Term") shall commence on the Leasing Date and terminate upon the termination of this Lease.

(b) *Notice*. The City may exercise the Option at any time during the Option Term by giving Exercise Notice to the Lessor at least sixty (60) days prior to the City's chosen closing date. The Exercise Notice shall specify the City's chosen closing date. The Lessor may in writing waive or reduce the length of the Exercise Notice.

(c) *Purchase Price*. The Purchase Price for the Public Plaza upon exercise of the Option, including the consideration for all Property Interests to be received by the City, shall be _____; provided, that all rental payments and other sums, including the Lease Transfer Amount, paid as rent to the Lessor up to the time of exercising the Option shall be credited toward the payment of the Purchase Price as of the date of payment. Payment of any portion of the Purchase Price by any person or entity other than the City shall be of no effect under this Lease.

(d) *Closing*. The closing shall occur on the date specified by the City in the Exercise Notice. At the closing, the Lessor shall convey the Public Plaza to the City by statutory warranty deed in the form attached as Exhibit B, and this Lease shall terminate.

(e) *Option Not Exercised*. If the City does not exercise the Option upon termination of this Lease, then, after giving the City ninety (90) days' written notice, Lessor may sell the Public Plaza to any third party. The Lessor shall remit to the City the proceeds from such sale, less the Lessor's costs in connection with the sale.

This Lease is not intended nor shall it be construed to provide that the City is under any obligation to purchase the Public Plaza.

3.13 Eminent Domain.

(a) *Total Taking*. If all of the Public Plaza is taken by eminent domain, then the City shall defease its rental payment obligations, the parties shall have no further obligations to each other, and this Lease shall terminate.

(b) *Partial Taking*. If there is a partial taking of the Public Plaza by eminent domain, this Lease shall not terminate and there shall be no abatement of rental payments otherwise payable by the City hereunder. The City may either retain any condemnation proceeds or apply them to replace all or any portion of the rental payments.

(c) *Insufficiency of Award*. If the condemnation award is insufficient to pay in full the cost of any rental payments or any repair, restoration, modification or improvement of any component of the Public Plaza, the City may, subject to appropriation of sufficient funds, complete the work and pay any cost in excess of the amount of the condemnation award. The City shall not be entitled to any reimbursement therefor from the Lessor, nor shall the City be entitled to any abatement of any rental payments or additional rent otherwise payable hereunder.

(d) *Cooperation of the Lessor*. The Lessor shall cooperate fully with the City at the expense of the City in filing any proof of loss with respect to any insurance policy and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Public Plaza and to the extent it may lawfully do so, authorizes the City to litigate in any proceeding resulting therefrom in the name of and on behalf of the Lessor. In no event will Lessor voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Public Plaza without the written consent of the City.

3.14 Destruction of the Public Plaza. In the event the Public Plaza is damaged or destroyed by casualty during the term of this Lease, this Lease shall not terminate nor shall there be any abatement of the rental payments or additional rent otherwise payable by City hereunder. The City may elect to defease or prepay the rental payments in accordance with this Lease.

3.15 Surrender. The City shall promptly yield and deliver to Lessor possession of the Public Plaza upon the termination of this Lease in accordance with its terms, unless the City purchases the Public Plaza.

3.16 Assignment.

(a) Lessor. The Lessor's right, title and interest in and obligations and duties under this Lease, including the right to receive and enforce payment of the rental payments to be made by the City under this Lease, may be assigned and reassigned, subject to prior written consent of the City; provided, however, that Lessor's assignment to a trustee in connection with the Certificates of Participation in the form set forth on Exhibit E attached hereto and incorporated herein by this reference is hereby permitted and consented to by the City. Such assignment shall occur immediately upon execution of this lease by the Developer and the City, and all rights and obligations of the Developer under this lease shall be immediately transferred to Trustee. The City hereby expressly acknowledges and consents to the execution and delivery of the Certificates of Participation. Assignment of this Lease by the Lessor shall be "without recourse" to the Lessor, and the City shall forever waive, discharge, and indemnify (including reasonable attorneys' fees and costs) the Developer from any and all claims, demands, liabilities, or causes of action arising out of, or relating to, the Public Plaza Lease after the Leasing Date. Any Trust Agreement shall require the Trustee to state in any Certificates of Participation issued or executed by the Trustee that such certificates are issued or executed without recourse to the Lessor.

(b) City. This Lease may be assigned by the City consistent with Section ___ of the Agreement; provided, however, that the City shall remain obligated to make the rental payments and additional rent payments hereunder notwithstanding any obligation that an assignee may assume; and provided further that the City shall first obtain an opinion from bond counsel that such assignment will not have an adverse effect on the tax-exempt status of the interest component of the rental payments.

ARTICLE 4. MISCELLANEOUS

4.1 Notices. Any notices required in accordance with any of the provisions herein shall be sent by registered or certified mail or hand delivered, addressed as follows:

To the City:	City of Kirkland 123 5th Avenue Kirkland, Washington 98033-6189 Attn: City Manager
To the Developer:	Coventry II DDR Totem Lake LLC 3300 Enterprise Parkway

Beachwood, OH 44122
Attn: Charles Worsham

or at such other place as the parties may in writing direct. All notices shall be deemed effective upon receipt, refusal of delivery or attempted delivery.

4.2 No Joint Venture. It is not intended by this Lease to, and nothing contained in this Lease shall, create any partnership, joint venture or other arrangement between Lessor and the City.

4.3 No Merger. In no event shall the interest, estate or rights of Lessor hereunder merge with any interest, estate or rights of the City as lessee under this Lease, it being understood that such interest, estate and rights of Lessor shall be deemed to be separate and distinct from the City's interest, estate or rights as lessee under this Lease, notwithstanding that any such interests, estates or rights shall at any time or times be held by or vested in the same person, corporation or other entity.

4.4 Amendment. This Lease may not be amended except by written instrument executed by the Lessor and the City and approved by the City Council. The Lessor's approval of such amendments, if required by the Agreement, shall not be unreasonably withheld.

4.5 Entire Agreement. The Agreement, this Lease and any exhibits or attachments thereto or hereto and forming a part thereof or hereof, set forth the entire agreement of the Lessor and the City concerning the Property Interests, and there are no other agreements or understandings, oral or written, between the Lessor and the City with regard to the Property Interests. In the event of a conflict between any other agreement and this Lease, the provisions of this Lease shall prevail.

4.6 Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

4.7 Recording. Any party may record this Lease in its entirety or in the form of a memorandum. Said memorandum or short form shall describe the parties, the Property Interests and this Lease.

4.8 Costs. Except as otherwise provided in the Agreement, the City shall be responsible for and provide for the payment of all costs and expenses related to the execution of this lease, [the execution and delivery of Certificates of Participation in this Lease,] the transfer of title or the transfer of other interests in this Lease, and the exercise of the Option, including without limitation insurance, recording fees, escrow fees and any applicable real estate excise taxes.

4.9 Governing Law; Venue. This Lease and the rights of the parties hereto shall be governed and construed in accordance with the laws of the State of Washington. Venue for any

action brought under this Lease shall be in the Superior Court for the State of Washington in King County.

4.10 Time. Time is of the essence in this Lease.

4.11 Successors and Assigns. This Lease may not be assigned except in accordance with Section 3.17 and the Agreement. All of the terms, provisions, and conditions of this Lease shall inure to the benefit of and be enforceable by the respective permitted successors and assigns of the parties to this Lease.

4.12 No Third-Party Beneficiaries. Except as expressly set forth herein, the provisions of this Lease are for the exclusive benefit of the parties to this Lease and their respective permitted successors and assigns, and are not for the benefit of any third person. This Lease shall not be deemed to have conferred any rights upon any third person.

4.13 No Waiver of Rights. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any party.

4.14 Survivability. Notwithstanding any provision in this Lease to the contrary, Article 11 (Representations and Warranties) shall remain operative and in full force and effect, regardless of the termination of this Lease in accordance with its terms.

4.15 Counterparts. This Lease may be executed in several counterparts, which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year first set forth above.

CITY OF KIRKLAND, WASHINGTON, a
municipal corporation

By:_____
Mayor

COVENTRY II DDR TOTEM LAKE, LLC

By:_____
Title: _____

STATE OF WASHINGTON

COUNTY OF KING | ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as a _____ of Coventry II DDR Totem Lake, LLC, a _____, to be the free and voluntary act of such _____ for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 200__.

_____
(Signature of Notary)

_____
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at_____
My appointment expires _____

STATE OF WASHINGTON

COUNTY OF KING | ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Mayor of the City of Kirkland, Washington, a municipal corporation, to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 200__.

_____
(Signature of Notary)

_____
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at_____
My appointment expires _____

EXHIBIT F

Form of City Garage Unit Lease*

LEASE WITH OPTION TO PURCHASE AND PROPERTY TRANSFER AGREEMENT

by and among

COVENTRY II DDR TOTEM LAKE, LLC

and the

CITY OF KIRKLAND, WASHINGTON

THIS LEASE WITH OPTION TO PURCHASE AND PROPERTY TRANSFER AGREEMENT ("Lease") is made as of this _____ day of _____, 200__, by and among Coventry II DDR Totem Lake, LLC (the "Developer"), a Delaware limited liability company, as Lessor, and the City of Kirkland, a code city of the state of Washington (the "City"), as lessee.

WITNESSETH:

1. The Developer owns approximately 26 acres of real property, commonly known as the Totem Lake Mall (the "Mall"), located in the City, as more fully described in the Development Agreement.

2. The Mall has been recognized as an under-performing property in need of redevelopment. The City has identified the Mall as a regional "Urban Center" by the Kirkland Comprehensive Plan and King County Countywide Planning Policies. The City has recognized the Mall as an under-performing property in need of redevelopment, to strengthen its role as a retail center and community gathering place.

3. The Developer and the City have entered into a Redevelopment Agreement for Totem Lake Mall, dated _____, 2006 (the "Agreement") under which the Developer has pursued the redevelopment of the Mall, which includes extensive demolition, reconfiguration and construction of buildings and improvements, with the completed Mall to be comprised of approximately 1,013,600 square feet of retail and office space, residential units, a cinema, and several parking structures. The redevelopment is contemplated to occur over ten years in several phases, with anticipated completion of the retail components within five years, and anticipated completion of the office and residential components within seven years.

4. Public use and enjoyment of the Mall is enhanced by creation of public spaces, consisting of a new east-west public plaza that will function as a public park, parkway or plaza ("Public Plaza"), improvement of 120th Avenue NE consistent with the new Public Plaza, and

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* To be adjusted for Lower Mall Public Plaza Improvements and for Upper Mall Public Plaza Improvements.

the development of public parking. These improvements help create a regional public gathering place and improve transportation and circulation.

5. Use of the public spaces and the reduction of traffic congestion is facilitated by City acquisition of parking facilities in the parking structure in the upper portions of the Mall. The Developer has constructed and will now lease to the City, with an option to purchase, a condominium unit representing a portion of the parking structure ("City Garage Unit").

6. The Developer has undertaken significant responsibilities and risks associated with developing and constructing the parking structure and Public Plaza, together with obligations regarding the maintenance of those facilities.

7. The Agreement is authorized by RCW 36.70B.170 through 36.70B.210, and this lease of the City Garage Unit is authorized by Chapter 35.42 RCW.

8. In consideration of the Developer designing and building the City Garage Unit [, granting the easements,] and providing other valuable consideration, the City has deemed it to be in the best interest of the City to lease with an option to purchase the City Garage Unit from the Developer.

9. The City determined that the value of the physical assets to be leased by the City significantly outweigh the amount to be invested by the City by leasing the improvements.

10. By Ordinance No. _____, the City authorized the execution of this Lease.

11. The City Garage Unit has been constructed at no cost to the City.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions hereinafter contained, the parties hereto agree as follows:

ARTICLE 1. Definitions

The following terms shall have the respective meanings set forth below for all purposes of this Agreement.

"City Garage Unit" means that certain condominium unit more particularly described in Exhibit A, which is by this reference incorporated herein.

"Developer Contract" means any contract, agreement or license, written or oral, to which the Developer, its Contractor(s) or subcontractors or their respective agents and employees is a party in connection with the construction of the City Garage Unit.

"Escrow Holder" means _____.

"Exercise Notice" means written notice, provided to the Lessor in accordance with Section 3.13(b), of the City's election to exercise the Option.

"Lease" means this Lease with Option to Purchase and Property Transfer Agreement.

"Lease Transfer Date" means _____.

"Leasing Date" means the date of this Lease.

"Option" means the irrevocable, exclusive option to purchase the City Garage Unit granted to the City in Section 3.13 of this Lease.

"Option Term" has the meaning given in Section 3.13(a) of this Lease.

"Purchase Price" means the price identified in Section 3.13(c) of this Lease.

All other capitalized terms used and not otherwise defined in this Lease shall have the meanings assigned them in the Agreement.

ARTICLE 1. Representations And Warranties

2.1 The Developer represents and warrants as follows:

(a) *Authority*. The Developer is authorized to enter into this Lease and the lease created hereunder (the "Lease") and to convey the City Garage Unit, and the person executing this Lease on behalf of the Developer is authorized to do so.

(b) *Title*. The Developer owns the City Garage Unit, as more particularly described in Exhibit A to this Lease and by this reference incorporated herein[, subject only to the exceptions set forth in Exhibit B, attached hereto and by this reference incorporated herein].

(c) *Substantial Completion of City Garage Unit*. The City Garage Unit has reached Substantial Completion and have been maintained in accordance with the Agreement.

(d) *Notice*. the Developer has designated the Leasing Date consistent with the requirements of the Agreement.

(e) *Encumbrances*. As of the Leasing Date, the City Garage Unit has been reconveyed from any lien created in connection with any of Developer's loan documents, and all security interests in the City Garage Unit under any such loan documents have been terminated and evidence thereof has been deposited with the Escrow Holder.

(f) *Claims*. Having conducted a reasonable investigation, as of the Leasing Date, the Developer certifies that the City Garage Unit is free and clear of any mortgage, lien, demand, invoice, obligation, penalty, charge, expense, claim, or dispute that may ripen into a claim of any kind whatsoever (including without limitation claims regarding death, injury, sickness, or property damage) of which the Developer is or should be aware after such investigation, arising by or through the actions of the Developer, its Contractor(s) or subcontractors or their respective agents and employees[, except as disclosed in Exhibit C to this Lease].

(g) *Escrow*. The Developer has deposited with the Escrow Holder all documents and funds required to be so deposited by the Developer under the Agreement.

(h) *No Default*. The Developer is not in default under the Agreement or any loan documents. The Developer has complied with all provisions applicable to it under the Agreement and any such loan documents.

(i) *No Contracts*. There are no contracts, agreements, or licenses, written or oral, to which the Developer, its Contractor(s) or subcontractors or their respective agents and employees is a party ("the Developer Contracts"), affecting the maintenance or use of the City Garage Unit, nor are there any other the Developer Contracts permitting or requiring any Person to maintain or use the City Garage Unit, that will survive the lease with option to purchase of the City Garage Unit to the City on the Leasing Date, other than those the Developer Contracts described in a certificate of the Developer of even date delivered to the City, and all parties to the Developer Contracts other than those described in such certificate have been notified that such the Developer Contracts will not survive the lease with option to purchase of the City Garage Unit to the City.

2.2 City Representations and Warranties: The City represents and warrants as follows:

(a) *Authority*. The City is authorized to enter into this Lease, and the person executing this Lease on behalf of the City is authorized to do so.

(b) *Escrow*. The City has deposited with the Escrow Holder all documents and funds required to be so deposited by the City under the Agreement.

(c) *No Default*. The City is not in default under the Agreement. As of the Leasing Date, the City has complied with all provisions applicable to it under the Agreement.

ARTICLE 3. LEASE

3.1 Creation of Lease. The Lessor hereby leases to the City the City Garage Unit upon the terms and conditions set forth in this Lease. This Lease shall commence on the Leasing Date, and shall terminate on [not to exceed 25] years from Leasing Date unless earlier terminated in accordance with the terms and provisions of this Lease or the Agreement.

3.2 Possession. From and after the Leasing Date, the City may have possession and use of the City Garage Unit for use as a public parking facility open to the public and all uses incidental thereto.

3.3 Quiet Enjoyment. The City, upon fully complying with and promptly performing all of the terms, covenants and conditions of this Lease on its part to be performed, shall have and quietly enjoy the City Garage Unit for the term of this Lease.

3.4 Rental Payments.

(a) *Components*. The principal component of the rental payments is set forth in Exhibit D-1 to this Lease and by this reference incorporated herein. The aggregate principal component of the rental payments shall equal the Lease Transfer Amount. The interest component of the rental payments, representing interest on the principal component of the rental

payments, together with the amortization of the principal component, is set forth in Exhibit D-2 to this Lease and by this reference incorporated herein.

(b) *Pledge*. The City shall make all rental payments at the times and in the amounts set forth in Exhibit D-2. The obligation of the City to make rental payments constitutes a limited tax general obligation of the City. The City hereby pledges irrevocably to include in its budget and levy taxes annually, within the constitutional and statutory limitations provided by law without a note of the electors of the City, on all of the taxable property within the City in an amount sufficient, together with other money legally available and to be used therefor, to pay when due the rental payments. The full faith, credit and resources of the City are irrevocably pledged for the annual levy and collection of such taxes and the prompt payment of the rental payments.

(c) *Tax Exemption*. The Lessor and the City intend that the interest component of the rental payments hereunder shall be excluded from gross income for federal income tax purposes. The Lessor and the City hereby each covenant that they will not make any use of the City Garage Unit that would cause this Lease [or the Certificates of Participation] to be treated as an "arbitrage bond" within the meaning of Section 148(a) of the Code at the time of such use. The City shall comply with the applicable requirements of Section 148(a) of the Code and the applicable regulations thereunder throughout the term of the Lease. The Lessor and the City each covenant that they will not act or fail to act in a manner that will cause the Lease [or the Certificates of Participation] to be considered an obligation not described in Section 103(a) of the Code. The Lessor and the City each further covenant that they will take no actions that would cause the Lease or the Certificates of Participation to be treated as a "private activity bond" as defined in Section 141 of the Code then in effect.

(d) *Additional* Rent. During the term of this Lease, the City shall pay as additional rent [trustee's fees and expenses in connection with the issuance of Certificates of Participation] and all taxes and assessments on the Property Interests for which the City is liable. Due to the contingent nature of such additional rent, it shall not constitute debt of the City for purposes of debt limitations established by RCW 39.36.020.

(e) *Defeasance*. In the event that money and/or "Government Obligations," as now or hereafter be defined in Chapter 39.53 RCW, maturing at such time or times and bearing interest to be earned thereon in amounts sufficient to pay or prepay all rental payments due under this Lease in accordance with the terms of this Lease, are irrevocably set aside and pledged in a special account to effect such payment or prepayment, then no further payments need be made of any rental payments under this Lease, and the Lessor shall not be entitled to any lien, benefit or security in the City Garage Unit, except the right to receive the funds so set aside and pledged.

(f) *Prepayment*. The City may prepay the principal component of the rental payments, in $5,000 increments, in whole or in part, on any date. The City shall give notice of any such prepayment to the Lessor in writing not less than three (3) days in advance of the intended prepayment date [and not less than sixty (60) days if Certificates of Participation have been issued]. Upon such prepayment, the term of this Lease shall be deemed modified such that this Lease terminates on the payment date for the last outstanding rental payment not prepaid.

3.5 Absolute Net Lease. This Lease is an "absolute net lease." As between the City and the Lessor, the City assumes the sole responsibility, and the Lessor shall have no responsibility, for the condition, use, maintenance and repair of the City Garage Unit after the Leasing Date. The City will, at its cost and expense, keep and maintain the City Garage Unit in good repair and condition, reasonable wear and tear and ordinary use excepted. Nothing in this Section 3.6 shall diminish any of the City's rights under warranties received pursuant to the Agreement.

3.6 Lease Nonterminable. Except as otherwise expressly provided in this Lease, this Lease shall not terminate, nor shall the City have any right to terminate this Lease or to be released or discharged from any obligations or liabilities hereunder for any reason, including without limitation damage or destruction of the City Garage Unit, it being the intention of the parties hereto that all rental payments payable by City hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. In that connection, City hereby waives, to the extent permitted by applicable law, any and all rights that it may now have or that may at any time hereafter be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms of this Lease and agrees that if, for any reason whatsoever, this Lease shall be terminated in whole or in part by operation of law or otherwise except as specifically provided in this Lease, the City nevertheless will pay to the Lessor an amount equal to each rental payment at the time such payment would have become due and payable in accordance with the terms hereof had such termination not occurred.

3.7 Default. In the event that (a) the City falls to make when due any rental payments or additional rent payments or (b) the City defaults in the performance or observance of any of the other terms, covenants, conditions or agreements of this Lease, which default is not cured within thirty (30) days after written notice and demand, or if such default shall be of such a nature that the same cannot practicably be cured within said thirty (30) day period and City shall not within said thirty (30) day period commence with due diligence and dispatch the curing and performance of such defaulted term, covenant, condition or agreement, or if City shall within said thirty (30) day period commence with due diligence and dispatch to cure and perform such defaulted term, covenant, condition or agreement and shall thereafter fail or neglect to prosecute and complete with due diligence and dispatch the curing and performance of such defaulted term, covenant, condition or agreement; then and in any such case, at the Lessor's option and in addition to all other rights or remedies the Lessor may, following the expiration of the cure period, if any, provided herein for such default, immediately declare the City's rights under this Lease terminated, and re-enter the City Garage Unit, using such force as may be necessary, and repossesses itself thereof, as of its former estate, and remove all persons and property from the City Garage Unit. Notwithstanding any such re-entry, the liability of the City for the rental payments at such times and in such amounts provided for herein by Exhibit D-1 and D-2 shall not be extinguished for the balance of the term of this Lease.

3.8 Compliance with Laws. The City shall at all times during the term of this Lease at the City's own cost and expense, perform and comply with all laws, rules, orders, ordinances, regulations and requirements, now or hereafter enacted or promulgated, of every government and municipality having jurisdiction over the City Garage Unit and of any agency thereof, relating to

the City Garage Unit, whether or not such laws, rules, orders, ordinances, regulations or requirements so involved shall necessitate structural changes, improvements, interference with use and enjoyment of the City Garage Unit, and the City shall so perform and comply, whether or not such laws, rules, orders, ordinances, regulations or requirements shall now exist or shall hereafter be enacted or promulgated, and whether or not such laws, rules, orders, ordinances, regulations or requirements can be said to be within the present contemplation of the parties hereto.

3.9 City's Right to Contest. The City shall have the right to contest, by appropriate legal proceedings, any tax, charge, levy, assessment, lien or other encumbrance, and/or any law, rule, order, ordinance, regulation or other governmental requirement affecting the City Garage Unit, and to postpone payment of or compliance with the same during the pendency of such contest, provided that: (a) the City shall not postpone the payment of any such tax, charge, levy, assessment, lien or other encumbrance for such length of time as shall permit the City Garage Unit, or any lien thereon created by such item being contested, to be sold by any federal, state, county or municipal authority for the non-payment thereof, (b) the City shall not postpone compliance with any such law, rule, order, ordinance, regulation or other governmental requirement if the Lessor will thereby be subject to criminal prosecution, or if any municipal or other governmental authority shall commence a process according to applicable law to carry out any act to comply with the same or to foreclose or sell any lien affecting all or part of the City Garage Unit which shall have arisen by reason of such postponement or failure of compliance; (c) the City shall proceed diligently and in good faith to resolve such contest; (d) such contest shall be in compliance with all laws, rules, orders, ordinances, regulations or other governmental requirements; and (e) the City shall not postpone compliance with any such laws, rules, orders, ordinances, regulations or other governmental requirements if the same shall invalidate any insurance required by this Lease.

3.10 Liability Insurance. During the term of this Lease, the City shall maintain, or cause to be maintained, in full force and effect, comprehensive public general liability insurance covering the City Garage Unit in such amounts as may be established by the City from time to time. The City may provide all or a portion of any insurance by self insurance. It is understood that this insurance covers any and all liability of the City and its officers, employees and agents, and the procurement thereof does not constitute a waiver of the defense of governmental immunity.

3.11 Liens. The City shall not create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the City Garage Unit. The City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The City shall reimburse the Lessor for any expense incurred by Lessor (including reasonable attorneys' fees) to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim incurred by the City.

3.12 Option to Purchase. The Lessor hereby grants the City an irrevocable, exclusive option to purchase the City Garage Unit ("Option") from the Lessor pursuant to the following terms.

(a) *Term*. The term of the Option ("Option Term") shall commence on the Leasing Date and terminate upon the termination of this Lease.

(b) *Notice*. The City may exercise the Option at any time during the Option Term by giving Exercise Notice to the Lessor at least sixty (60) days prior to the City's chosen closing date. The Exercise Notice shall specify the City's chosen closing date. The Lessor may in writing waive or reduce the length of the Exercise Notice.

(c) *Purchase Price*. The Purchase Price for the City Garage Unit upon exercise of the Option, including the consideration for all Property Interests to be received by the City, shall be _____; provided, that all rental payments and other sums, including the Lease Transfer Amount, paid as rent to the Lessor up to the time of exercising the Option shall be credited toward the payment of the Purchase Price as of the date of payment. Payment of any portion of the Purchase Price by any person or entity other than the City shall be of no effect under this Lease.

(d) *Closing*. The closing shall occur on the date specified by the City in the Exercise Notice. At the closing, the Lessor shall convey the City Garage Unit to the City by statutory warranty deed in the form attached as Exhibit B, and this Lease shall terminate.

(e) *Option Not Exercised*. If the City does not exercise the Option upon termination of this Lease, then, after giving the City ninety (90) days' written notice, Lessor may sell the City Garage Unit] to any third party. The Lessor shall remit to the City the proceeds from such sale, less the Lessor's costs in connection with the sale.

This Lease is not intended nor shall it be construed to provide that the City is under any obligation to purchase the City Garage Unit.

3.13 Eminent Domain.

(a) *Total Taking*. If all of the City Garage Unit is taken by eminent domain, then the City shall defease its rental payment obligations, the parties shall have no further obligations to each other, and this Lease shall terminate.

(b) *Partial Taking*. If there is a partial taking of the City Garage Unit by eminent domain, this Lease shall not terminate and there shall be no abatement of rental payments otherwise payable by the City hereunder. The City may either retain any condemnation proceeds or apply them to replace all or any portion of the rental payments.

(c) *Insufficiency of Award*. If the condemnation award is insufficient to pay in full the cost of any rental payments or any repair, restoration, modification or improvement of any component of the City Garage Unit, the City may, subject to appropriation of sufficient funds, complete the work and pay any cost in excess of the amount of the condemnation award. The City shall not be entitled to any reimbursement therefor from the Lessor, nor shall the City be entitled to any abatement of any rental payments or additional rent otherwise payable hereunder.

(d) *Cooperation of the Lessor*. The Lessor shall cooperate fully with the City at the expense of the City in filing any proof of loss with respect to any insurance policy and in the

prosecution or defense of any prospective or pending condemnation proceeding with respect to the City Garage Unit and to the extent it may lawfully do so, authorizes the City to litigate in any proceeding resulting therefrom in the name of and on behalf of the Lessor. In no event will Lessor voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the City Garage Unit without the written consent of the City.

3.14 Destruction of the City Garage Unit. In the event the City Garage Unit is damaged or destroyed by casualty during the term of this Lease, this Lease shall not terminate nor shall there be any abatement of the rental payments or additional rent otherwise payable by City hereunder. The City may elect to defease or prepay the rental payments in accordance with this Lease.

3.15 Surrender. The City shall promptly yield and deliver to Lessor possession of the City Garage Unit upon the termination of this Lease in accordance with its terms, unless the City purchases the City Garage Unit.

3.16 Assignment.

(a) Lessor. The Lessor's right, title and interest in and obligations and duties under this Lease, including the right to receive and enforce payment of the rental payments to be made by the City under this Lease, may be assigned and reassigned, subject to prior written consent of the City; provided, however, that Lessor's assignment to a trustee in connection with the Certificates of Participation in the form set forth on Exhibit E attached hereto and incorporated herein by this reference is hereby permitted and consented to by the City. Such assignment shall occur immediately upon execution of this lease by the Developer and the City, and all rights and obligations of the Developer under this lease shall be immediately transferred to Trustee. The City hereby expressly acknowledges and consents to the execution and delivery of the Certificates of Participation. Assignment of this Lease by the Lessor shall be "without recourse" to the Lessor, and the City shall forever waive, discharge, and indemnify (including reasonable attorneys' fees and costs) the Developer from any and all claims, demands, liabilities, or causes of action arising out of, or relating to, the City Garage Unit Lease after the Leasing Date. Any Trust Agreement shall require the Trustee to state in any Certificates of Participation issued or executed by the Trustee that such certificates are issued or executed without recourse to the Lessor.

(b) *City*. This Lease may be assigned by the City consistent with Section ___ of the Agreement; provided, however, that the City shall remain obligated to make the rental payments and additional rent payments hereunder notwithstanding any obligation that an assignee may assume; and provided further that the City shall first obtain an opinion from bond counsel that such assignment will not have an adverse effect on the tax-exempt status of the interest component of the rental payments.

ARTICLE 4. MISCELLANEOUS

4.1 Notices. Any notices required in accordance with any of the provisions herein shall be sent by registered or certified mail or hand delivered, addressed as follows:

To the City:	City of Kirkland 123 5th Avenue Kirkland, Washington 98033-6189 Attn: City Manager
To the Developer:	Coventry II DDR Totem Lake LLC 3300 Enterprise Parkway Beachwood, OH 44122 Attn: Charles Worsham

or at such other place as the parties may in writing direct. All notices shall be deemed effective upon receipt, refusal of delivery or attempted delivery.

4.2 No Joint Venture. It is not intended by this Lease to, and nothing contained in this Lease shall, create any partnership, joint venture or other arrangement between Lessor and the City.

4.3 No Merger. In no event shall the interest, estate or rights of Lessor hereunder merge with any interest, estate or rights of the City as lessee under this Lease, it being understood that such interest, estate and rights of Lessor shall be deemed to be separate and distinct from the City's interest, estate or rights as lessee under this Lease, notwithstanding that any such interests, estates or rights shall at any time or times be held by or vested in the same person, corporation or other entity.

4.4 Amendment. This Lease may not be amended except by written instrument executed by the Lessor and the City and approved by the City Council. The Lessor's approval of such amendments, if required by the Agreement, shall not be unreasonably withheld.

4.5 Entire Agreement. The Agreement, this Lease and any exhibits or attachments thereto or hereto and forming a part thereof or hereof, set forth the entire agreement of the Lessor and the City concerning the Property Interests, and there are no other agreements or understandings, oral or written, between the Lessor and the City with regard to the Property Interests. In the event of a conflict between any other agreement and this Lease, the provisions of this Lease shall prevail.

4.6 Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

4.7 Recording. Any party may record this Lease in its entirety or in the form of a memorandum. Said memorandum or short form shall describe the parties, the Property Interests and this Lease.

4.8 Costs. Except as otherwise provided in the Agreement, the City shall be responsible for and provide for the payment of all costs and expenses related to the execution of this lease, [the execution and delivery of Certificates of Participation in this Lease,] the transfer of title or the transfer of other interests in this Lease, and the exercise of the Option, including without limitation insurance, recording fees, escrow fees and any applicable real estate excise taxes.

4.9 Governing Law; Venue. This Lease and the rights of the parties hereto shall be governed and construed in accordance with the laws of the State of Washington. Venue for any action brought under this Lease shall be in the Superior Court for the State of Washington in King County.

4.10 Time. Time is of the essence in this Lease.

4.11 Successors and Assigns. This Lease may not be assigned except in accordance with Section 3.17 and the Agreement. All of the terms, provisions, and conditions of this Lease shall inure to the benefit of and be enforceable by the respective permitted successors and assigns of the parties to this Lease.

4.12 No Third-Party Beneficiaries. Except as expressly set forth herein, the provisions of this Lease are for the exclusive benefit of the parties to this Lease and their respective permitted successors and assigns, and are not for the benefit of any third person. This Lease shall not be deemed to have conferred any rights upon any third person.

4.13 No Waiver of Rights. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any party.

4.14 Survivability. Notwithstanding any provision in this Lease to the contrary, Article 11 (Representations and Warranties) shall remain operative and in full force and effect, regardless of the termination of this Lease in accordance with its terms.

4.15 Counterparts. This Lease may be executed in several counterparts, which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year first set forth above.

CITY OF KIRKLAND, WASHINGTON, a
municipal corporation

By:_____
Mayor

COVENTRY II DDR TOTEM LAKE, LLC

By:_____
Title: _____

STATE OF WASHINGTON

COUNTY OF KING ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as a _____ of Coventry II DDR Totem Lake, LLC, a _____, to be the free and voluntary act of such _____ for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 200__.

_____
(Signature of Notary)

_____
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at_____
My appointment expires _____

STATE OF WASHINGTON

COUNTY OF KING | ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Mayor of the City of Kirkland, Washington, a municipal corporation, to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 200__.

_____
(Signature of Notary)

_____
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at_____
My appointment expires _____

DEVELOPERS
DIVERSIFIED
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January 11, 2006

City Council
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033-6189

Re: TOTEM LAKE MALL DEVELOPMENT AGREEMENT

Dear City Council Members:

Coventry II DDR Totem Lake LLC ("Coventry") and the City of Kirkland ("City") have undertaken an enormous and iterative process to facilitate redevelopment of the Totem Lake Mall at a scale, quality and magnitude that will be mutually beneficial to Coventry and the City. The Development Agreement is very complex and represents a significant investment of time and resources by both parties over a period of nearly four months. Virtually everything in the Development Agreement has been considered, negotiated and agreed upon after extensive discussions and meetings. However, there are a few matters that were mentioned at the City Council hearing on January 3, 2006, that warrant further discussion, but which Coventry does not believe are appropriate for inclusion within the Development Agreement.

Some members of the City Council expressed a desire for assurance that the residential component of the redevelopment project will be constructed. There was a suggestion that the residential component should be required as a precondition to City financial participation. This is an issue that was considered, negotiated and discussed during deliberations on the Development Agreement. Coventry is not in a position to make any guarantees with regard to the residential component, because Coventry is not a residential developer and will be selling the air rights for the residential component to a third party for development. As such, Coventry would be remiss to gamble on the prospect that a suitable third party will be located, that market conditions will not change, and that the third party eventually selected will perform under a time schedule established in the Development Agreement without their participation. There are too many variables and uncertainties, many of which are outside of Coventry's ability to control. The City financial participation is crucial to Coventry's ability and desire to move forward with the redevelopment project. Without assurances that Coventry can control its destiny with regard to performance under the Development Agreement, it would be far too risky to pursue the redevelopment project.

3300 Enterprise Parkway / P.O. Box 228042, Beachwood, OH 44122 / 216.755.1500 / www.ddrc.com

Accordingly, Coventry is not willing to enter into a Development Agreement that would require it to guarantee that the residential component will be constructed, or that would condition the City's financial participation in the overall project on construction of the residential component. It would require Coventry to redevelop the Mall beyond the level of economic feasibility without reasonable assurance of the necessary City financial participation.

Nonetheless, sale of the air rights are an integral component of the overall financial feasibility and will impact the ultimate success of this redevelopment project. Coventry intends to aggressively move forward with the residential component, and has solicited and received inquiries and expressions of interest from several significant residential developers. Because the residential component will be constructed over the new retail structures, Coventry will be required to integrate structural support infrastructure and design features into the planned retail structures during the first phase of redevelopment. There will be incentives, both financial and otherwise, for Coventry to move forward with efforts to identify and enter into arrangements with a residential developer early in the process to address common issues associated with phasing of the redevelopment and coordinating the timing of construction to prevent disruption of retail operations. However, at this juncture, Coventry is at the conceptual master plan stage of redevelopment and it will take additional time to ferret out the market conditions, industry demand, and feasibility of a suitable arrangement for the residential component. As such, Coventry is not in a position to "guarantee" that the residential component will be constructed, nor willing to redevelop the Mall as currently planned without assurance that the City will provide the agreed upon financial participation.

There were a couple of additional "design" items mentioned at the City Council hearing that Coventry is willing to address, but which are proper for consideration during the Design Review Board deliberations as each phase of the redevelopment is presented for approval. Coventry is willing to address suitable motorcycle parking spaces, location and design of transit shelters, suitable bicycle racks, and weather protection (awnings) throughout the development. The Design Guidelines are applicable to the redevelopment project and provide a mechanism to ensure consideration. Coventry does not believe that inclusion of these design items in the Development Agreement is warranted, especially since these are only a few of the multitude of factors and items that need to be addressed during the Design Review Board process. We believe that inclusion of these items in the Development Agreement may hamper efforts to coordinate the overall design of the project and may eliminate design alternatives deemed advantageous by the parties. All design features of the project should be considered as a whole, at the appropriate time, and should not be addressed in a piecemeal fashion. Accordingly, Coventry will commit to addressing these items during the Design Review Board deliberations, but requests that the Development Agreement not require inclusion of these design items.

There was discussion regarding the provision of a suitable pedestrian connection between the new Transit Center and the Mall. This requires coordination between Evergreen Hospital, Coventry and the City. Coventry is willing to participate in providing the pedestrian connection, and has met with Evergreen Hospital representatives to discuss this issue. However, as with the residential component, Coventry does not have sole control over this issue and is not willing to include this requirement in the Development Agreement. However, Coventry is willing, and required by the Conceptual Master Plan, to bring this issue before the Design Review Board in conjunction with approval of phase 2 of the project. Based upon feasibility discussions with Evergreen Hospital representatives, Coventry is willing to propose a sidewalk from its property boundary adjacent to the Transit Center that would be five feet (5') in width and would connect to the fourth level of the Mall parking structure. Coventry will present this to the Design Review Board during its deliberations. The City will need to work with Evergreen Hospital with regard to its participation in the overall plan to provide the necessary link from the Transit Center to the sidewalk provided by Coventry.

Thank you for consideration of these comments. We believe that the mutual efforts of both the City and Coventry have resulted in the framework for redevelopment of the Mall that will be advantageous to the residents of the City and greater Eastside region. Coventry encourages the City to approve the Development Agreement on January 17, 2006, in order to facilitate preparation of the final design plans and commence the work necessary to accomplish the redevelopment in a timely manner.

Sincerely,

Charles Worsham
Senior Development Director

cc: Peter Henkel
Tim Bruce

CITY OF KIRKLAND
123 FIFTH AVENUE ı KIRKLAND, WASHINGTON 98033-6189 ı (425) 828-1243

DEPARTMENT OF PUBLIC WORKS MEMORANDUM

To: Eric Shields, Planning Director

From: Thang Nguyen, Transportation Engineer

Date: January 6, 2006

Subject: Totem Lake Mall Redevelopment- Transportation Analysis

Public Works recently reviewed the traffic impact analysis report prepared for the redevelopment of the Totem Lake Mall. The review was based on Mall traffic and accompanying background traffic for the forecast Mall build out year of 2011. The result of that review was presented to the City Council. This purpose of this memo is to answer questions that Council members raised during their review. Council had four questions:

1. How was it determined that a traffic signal will not be needed at the Totem Lake Boulevard/Central Boulevard (Plaza) intersection?
2. Will a signal be needed in the future after the completion of the Mall?
3. Who will pay for the signal if it is needed?
4. What planned road improvements were included in the analysis ?
5. Will angle parking along Central Boulevard work?

1. Need for Traffic Signal

Based on the traffic analysis and report, a traffic signal at the intersection of Totem Lake Boulevard and the proposed Central Boulevard (the proposed new east-west through road connecting the upper and lower mall) is not needed.

The redevelopment of the Mall passed traffic concurrency without the need for off-site intersection mitigation. Traffic concurrency only tests specific signalized intersections and does not include site specific requirements such as driveways. For determining other mitigation, SEPA is used. For SEPA mitigation, the City requires developers to mitigate traffic impacts when one of the following two conditions is met:

1. An intersection level of service is at E or worse and the project traffic is more than 15% of the intersection proportional share.
2. An intersection level of service is at F or worse and the project traffic is more than 5% of the intersection proportional share.

The Totem Lake Boulevard/Central Boulevard intersection is forecasted to operate at LOS-C without a traffic signal, Thus a signal is not required and mitigation is not warranted.

2. Will a signal be needed in the future?
Although the forecast of traffic distribution to the Mall did take into account the effect of the NE 128th Street overpass, traffic calming on 120th Avenue NE and proposed driveways, it is difficult to know exactly how traffic will redistribute itself once the Mall begins operation.

The movie theater and the majority of the retail and parking are to be located on upper mall. Thus more project traffic was forecasted to use 120th Avenue NE than Totem Lake Boulevard because of 120th Avenue's direct connection to the upper mall and close proximity to the I-405 ramps. Traffic from the northeast was also assigned to use 120th Avenue NE because of the direct connection to the upper mall. To balance out the distribution of project traffic, most of the traffic to the lower mall was assigned to Totem Lake Boulevard.

Exactly how traffic accesses the mall will dictate the need for a traffic signal at the Totem Lake Boulevard/Central Boulevard intersection. Staff believes that if a traffic signal at the Totem Lake Boulevard/Central Boulevard is needed it will be sometime after the complete build-out of the Mall. In particular, with the construction of the NE 132nd Street/I-405 ramps in 2021, more project traffic from southbound I-405 may access the mall via Totem Lake Boulevard. Perhaps increasing the need for a traffic signal at the Totem Lake Boulevard intersection.

3. Who would pay for a signal?
The approximate cost of a signal is $400,000 in today's dollars. This cost includes engineering, design and construction. However, some underground equipment could be installed during the construction of the Mall, reducing the cost of construction.

The development agreement addresses SEPA mitigation requirements. Since a traffic signal at the intersection of Totem Lake Boulevard/Central Boulevard is not required under SEPA for the development of the Mall, the City is not responsible for funding it per the Development Agreement. The development agreement does not discuss funding of a traffic signal after the completion of the Mall. Obviously, if the City wished to install a signal at its expense it could do so at any time.

In the event that the Mall generates more traffic than forecasted or it is distributed differently than predicted and congestion effects the internal circulation of the Mall, it may be in the best interest of the Mall to signalize the intersection at their own expense.

4. What intersections were included in the analysis?
The traffic concurrency test and traffic impact analysis of the redevelopment of the Mall includes the following infrastructure improvements that are in the current Six-Year CIP:

- NE 128th Street overpass
- Widening of 120th Avenue NE from NE 128th Street to NE 132nd Street
- Traffic calming of 120th Avenue NE from Totem Lake Boulevard to NE 128th Street

- 124th Avenue NE widening between NE 116th Street and NE 124th Street
- Improvements to the Westbound to Northbound I-405 ramp at NE 124th Street
- Intersection improvements at the intersection of NE 116th Street and 124th Avenue NE
- Intersection improvements at the intersection of NE 124th Street and 124th Avenue NE
- Intersection improvements at the intersection of NE 128th Street and 120th Avenue NE
- Intersection improvements at the intersection of NE 132nd Street and 124th Avenue NE

The proposed ramps off at I-405/NE 132nd Street were not included because when the traffic model was updated in early 2005, the ramps were not funded. The new interchange is scheduled for construction in 2021, which is 10 years after Mall build out is planned for completion.

5. Will angle parking along Central Boulevard work?
For safety reasons, parallel parking is generally preferred over angle parking by the transportation engineering community. There are data that show that traffic accidents increase with angle parking as compared to parallel parking. Although Public Works' predisposition is preference of parallel parking over angle parking, we are still open to the concept of angle parking provided the applicant can furnish technical data indicating that it will work safely.

I hope the information in this memo answers all of the City Council's questions. I am available to answer more questions or provide clarification if needed.

CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3225
www.ci.kirkland.wa.us

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT MEMORANDUM

To: David Ramsay, City Manager

From: Eric Shields, AICP, Planning Director
Jon Regala, Associate Planner

Date: January 9, 2006

Subject: **BACKGROUND INFORMATION REGARDING MID-BLOCK PEDESTRIAN CONNECTION BETWEEN EVERGREEN HOSPITAL AND TOTEM LAKE MALL**

EVERGREEN HOSPITAL MASTER PLAN

Ordinance 3862, adopted by the City Council October 15, 2002, set forth the zoning regulations for the Evergreen Healthcare campus. Development of the Hospital Campus required approval of a Master Plan and subsequent approval by the Design Review Board (DRB) for future buildings. Included in the new regulations are maximum limits for building area, trip generation, height limits, and lot coverage. Specifically, in terms of pedestrian access, Kirkland Zoning Code Section 55.27.010 Special Regulation 9.C.9 states that *connections to the Totem Lake Mall and the transit center should be included in the Master plan. The Master plan should also explore options for providing pedestrian connections across the site.*

This zoning regulation was supported by the following language in the Comprehensive Plan:

Policy TL-9.2: *Implement design principles for the Evergreen Hospital Medical Center.*

Pedestrian access within and through the Hospital campus should continue to be improved. The Hospital should coordinate with the Totem Lake Mall to provide a pedestrian connection that allows access between the Hospital, Transit Center and retail area in a safe and attractive environment. This feature may be an open space amenity or incorporated into buildings located near the slope.

On August 5, 2003, the City Council approved the Master Plan for Evergreen Hospital. In the approved Master Plan, Figure 4, the Pedestrian Circulation Plan identifies a mid-block pedestrian connection to Totem Lake Mall, along the south property line of the Gateway Center site (see Attachment 1). The text accompanying the pedestrian connection reads: *Potential pedestrian connection to Totem Lake Mall pending compatible development of Totem Lake Mall.*

Additional language in the TL-3B subarea (Gateway site), page 32 of the approved Master Plan, reads: *it may be possible to introduce additional pedestrian connections to (the) Totem (Lake) Mall area pending future development and configuration of uses on that property.*

At the time of the Master Plan approval, it was unknown how a mid-block connection to the Totem Lake Mall would work, therefore the general approval language for the pedestrian connection.

GATEWAY BUILIDING - DESIGN REVIEW APPROVAL

On July 29, 2005, the DRB approved the design of the Evergreen Hospital Gateway project (2 medical office buildings, transit center, and parking structure) on the TL-3B subarea on the Hospital Campus (see Attachment 2). Included in this approved design is a pedestrian connection to the Totem Lake Mall. The DRB approved this connection as a secondary connection to the Mall property with the thought that the primary access between the two properties would be along 120th Avenue NE.

The pedestrian connection is located one level beneath the office buildings and transit center and is accessed by a stairway near the south property line. Once on the lower level, a sidewalk leads to the south property line where the connection dead-ends pending a connection on the Totem Lake Mall property (see Attachment 3). The sidewalk does also continue to the west and ramps down towards 120th Avenue NE. The DRB did not require that access to the pedestrian connection itself be ADA accessible nor is it a requirement of City codes. Attachment 4 contains several photographs from a scale model showing the area of the pedestrian connection to the Mall.

GATEWAY PHASE I BUILDING PERMIT APPROVAL

On October 18, 2005, the City issued BLD04-01389 for Phase I of the Gateway office project consistent with the DRB's approval (see Attachment 3). This phase of the project includes the parking garage, one of two medical office buildings, and transit center. Included in this approval is the stairway leading to the pedestrian connection to the Mall property. A pedestrian access easement is required to be recorded on the property prior to occupancy of the medical office building.

CURRENT STATUS

On November 7, 2005, the DRB approved the Conceptual Master Plan (CMP) for the Totem Lake Mall. The DRB conditioned the CMP requiring that review of the mid-block pedestrian connection between the Mall and Hospital occur during Phase II of the project. City staff has since met with representatives from both Evergreen Hospital and Totem Lake Mall regarding this required mid-block pedestrian connection. While Evergreen Hospital and the Mall owners have agreed to the pedestrian connection, both have expressed concerns in constructing the pedestrian connection when their respective projects are built.

The primary concern for both parties is the location of the pedestrian connection. Evergreen Hospital has proposed and received approval for the pedestrian connection that is located one level below street level in their parking garage. This was done to prevent conflicts between pedestrians and bus traffic associated with the transit center. In the approved CMP for Totem Lake Mall, a parking garage is also located in the vicinity of the pedestrian connection. Therefore, the pedestrian connection between the two properties would occur between the two adjoining parking garages.

After studying the issue further, both parties feel that this is an undesirable location. Both Evergreen Hospital and Totem Lake Mall are hesitant in creating the mid-block connection citing safety concerns for pedestrians, liability to the property owners, and a poor aesthetic environment with the connection being within a parking garage. Both parties feel that the only pedestrian connection between the two properties should be along 120th Avenue NE.

The City has maintained the position that the mid-block connection should be required based on the history and policy direction for such a connection. Also, with the addition of a new transit center on the Hospital property, the mid-block pedestrian connection provides for a quick shortcut to the proposed office building located on the parking garage on the Mall property. City staff supports the concept that the mid-block connection function as a secondary access point between the two properties with the primary connection remain along 120th Avenue NE. City staff anticipates that the final design of the pedestrian connection will not occur until Phase II is brought before the DRB for review when the upper Mall parking garage will be designed. In the meantime, further discussions with Evergreen Hospital and the Totem Lake Mall owners

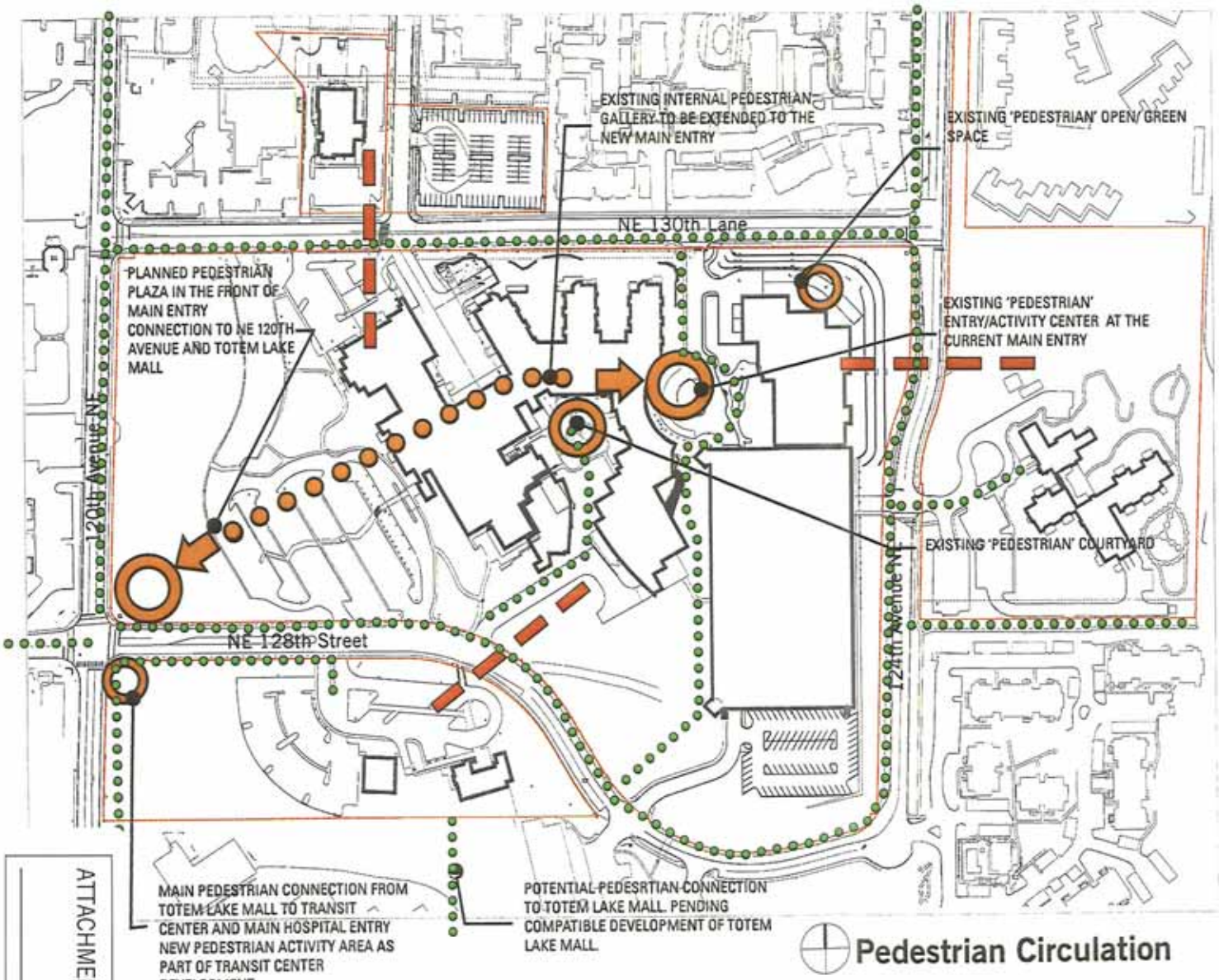
are necessary to ensure that the pedestrian connection between the two properties will be created and details of the easement and design are worked out ahead of time.

ATTACHMENTS

1. Evergreen Master Plan, Figure 4, Pedestrian Circulation Plan
2. DRB approved Evergreen Gateway Center site plan
3. Gateway Center Building Permit approved site plan
4. Photographs of pedestrian connection from scale model

Figure 4.

Pedestrian Circulation



Pedestrain exterior connection

Pedestrian interior connection

Potential over/underpass

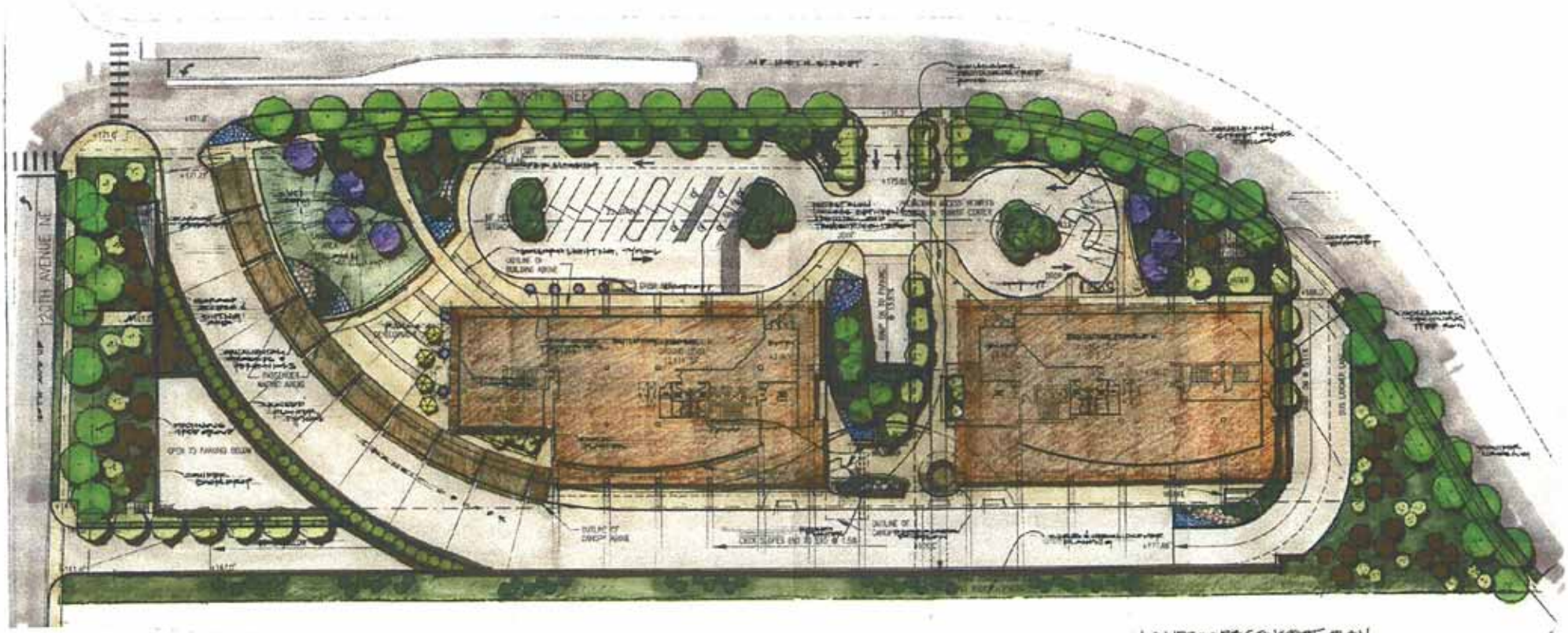
Pedestrian activity area

0 100' 200'

October 3, 2003
Mahlum *architects*

ATTACHMENT

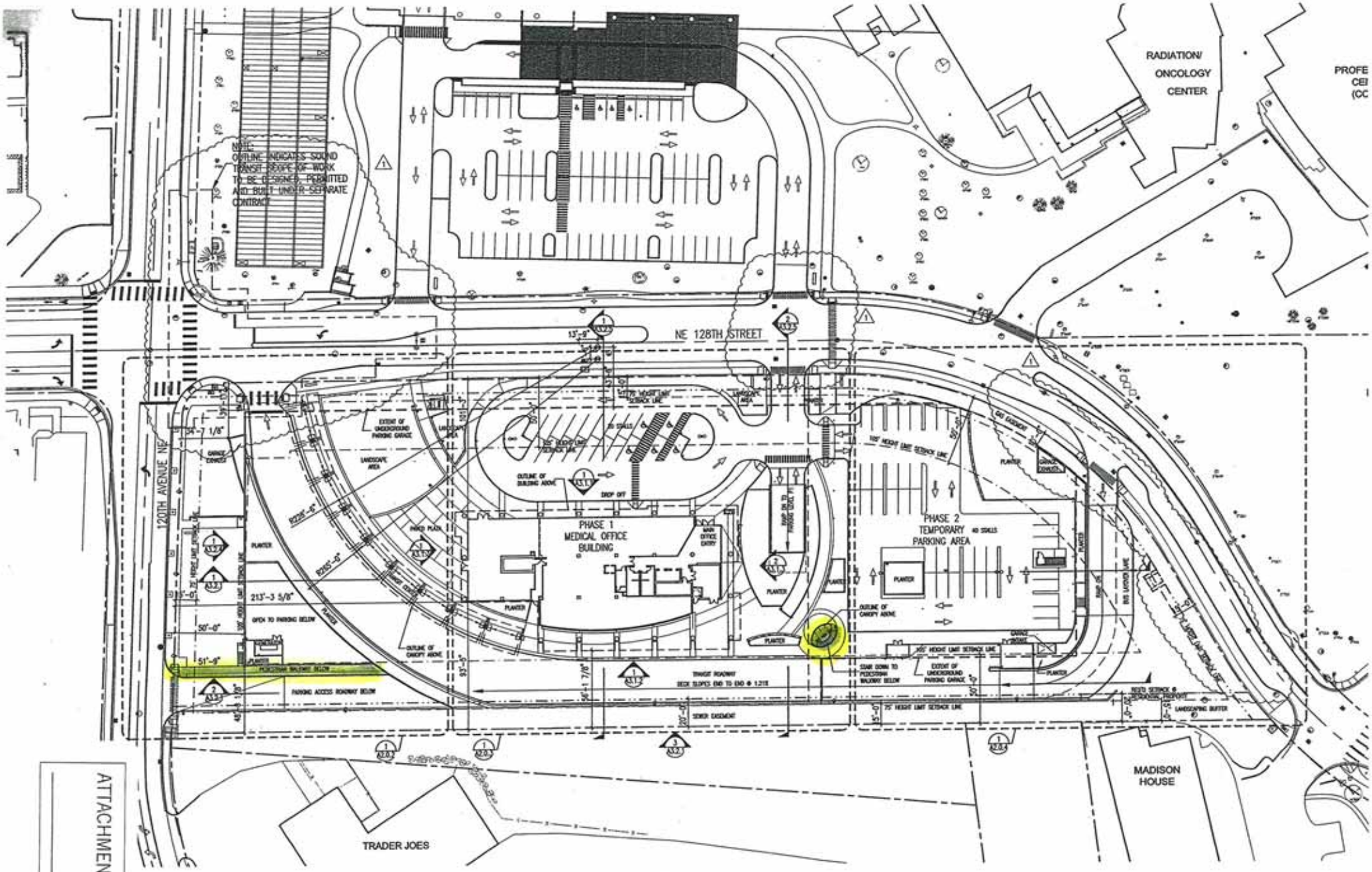
JULY 15, 2004



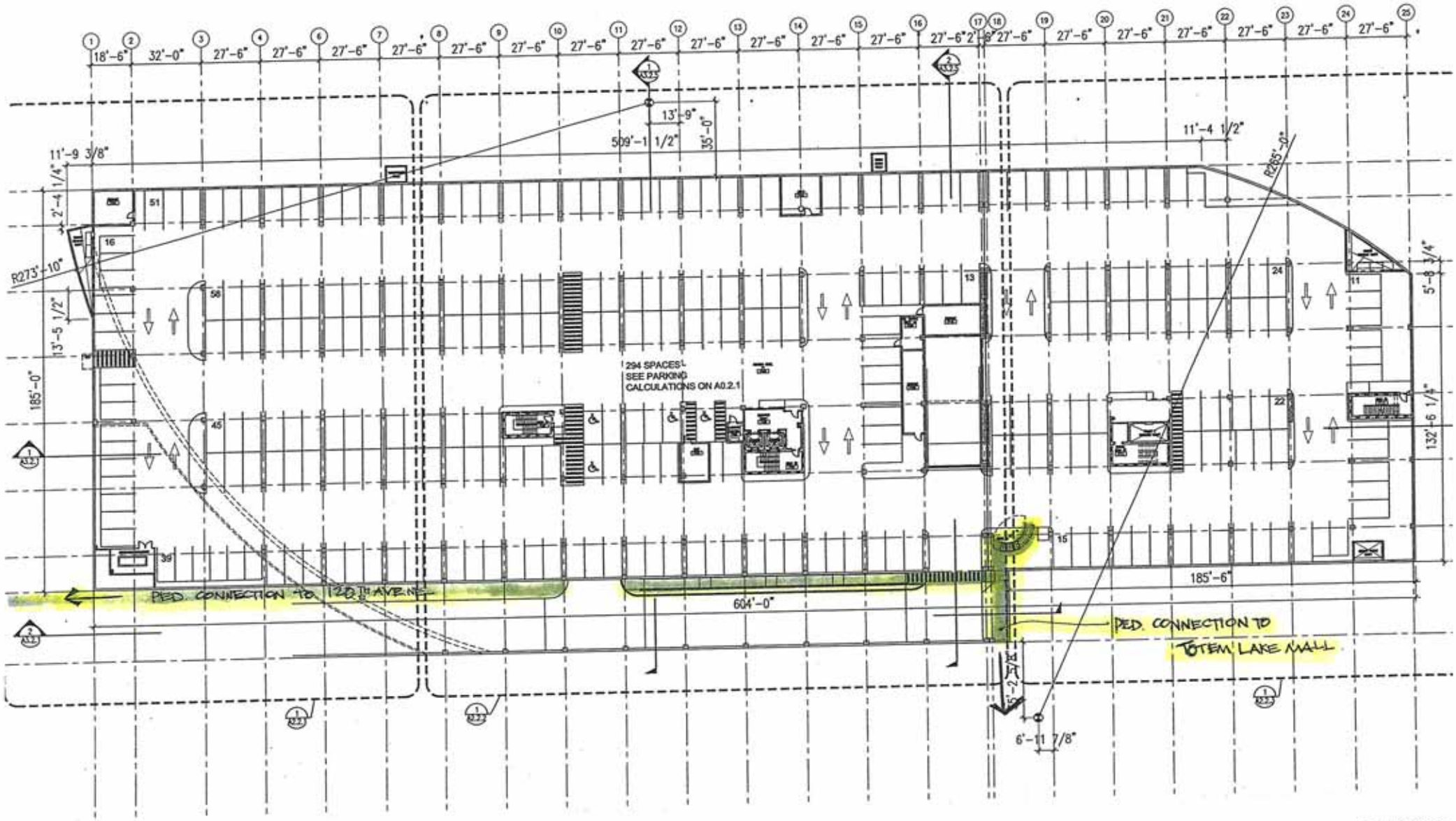
LANDSCAPE CONCEPT PLAN

ATTACHMENT 2

ATTACHMENT 2
DRC04-00002

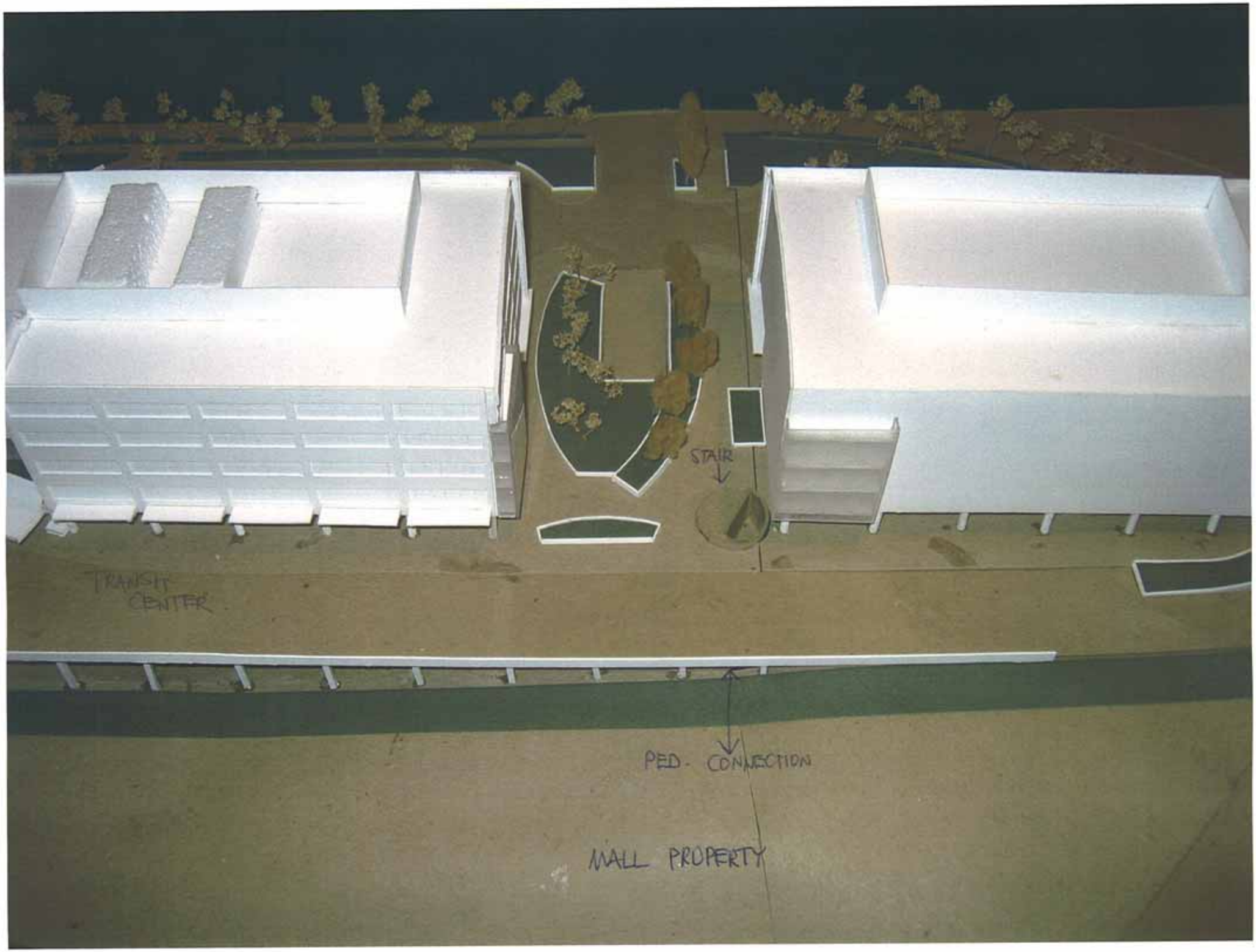


ATTACHMENT 3



1 PARKING LEVEL
SCALE: 1" = 20'-0"

ATTACHMENT 4


STAIR
TRANSIT CENTER
PED. CONNECTION
MALL PROPERTY

PED
CONNECTION
MALL
PROPERTY

ORDINANCE 4034

AN ORDINANCE OF THE CITY OF KIRKLAND APPROVING A DEVELOPMENT AGREEMENT WITH COVENTRY II DDR TOTEM LAKE, LLC, FOR REDEVELOPMENT OF THE TOTEM LAKE MALL (FILE NO. DRC05-00005).

WHEREAS, Coventry II DDR Totem Lake, LLC ("Developer") owns real property in the City commonly known as the Totem Lake Mall ("Mall"); and

WHEREAS, the goals and policies of the Comprehensive Plan promote redevelopment of the Mall to strengthen its role as a retail center and community gathering place, and further encourage mixed use development of the Mall, with high density office and/or residential uses; and

WHEREAS, recognizing the Mall as an under-performing property in need of redevelopment, the City has identified redevelopment of the Mall as a top economic development priority; and

WHEREAS, the Developer has prepared a redevelopment proposal for the Mall, which includes extensive demolition, reconfiguration and construction of buildings and improvements, with the completed Mall to be comprised of approximately 1,013,600 square feet of retail and office space, residential units, a cinema, and several parking structures; and

WHEREAS, the Mall redevelopment is contemplated to occur over ten years in two primary phases, with anticipated completion of the retail components within five years, and anticipated completion of the office and residential components within seven years; and

WHEREAS, the City plans to improve and realign a segment of 120th Avenue NE, which runs generally north to south through the Mall, and is willing to coordinate such improvement and relocation with redevelopment of the Mall; and

WHEREAS, public use and enjoyment of the Mall will be enhanced by creation of public spaces, consisting of a new east-west public plaza that will function as a public ~~park,~~ parkway or plaza ("Public Plaza"), and improvement of 120th Avenue NE consistent with the new Public Plaza; and

WHEREAS, such improvements will create a regional public gathering place and will be the site of public events; and

WHEREAS, use of the public spaces, and reduction of traffic congestion, will both be facilitated by City acquisition of a condominium unit in a portion of the parking structure in the upper portion of the Mall, which the Developer is willing to construct and lease to the City, with an option to purchase ("City Garage Unit"); and

WHEREAS, the Mall redevelopment is expected to increase tax revenues, thereby improving the financial stability and general economic vitality of the City; and

WHEREAS, the Mall redevelopment will create a public gathering place, new employment opportunities, and new housing adjacent to public transit and other public and private amenities, which will materially assist the City in carrying out the goals and objectives of the Comprehensive Plan and the Totem Lake Neighborhood Plan; and

WHEREAS, the Developer is willing to undertake significant responsibilities and risks associated with developing and constructing the upper Mall parking structure and the Public Plaza, together with obligations regarding the maintenance of those facilities; and

WHEREAS, in view of the public benefits to be gained by the City through acquisition of the Public Plaza, the City Garage Unit, and construction of improvements to 120th Avenue NE, as well through participation in the Mall redevelopment, the City is willing to invest up to $15,000,000.00 in the public elements associated with the Mall redevelopment; and

WHEREAS, the City anticipates that tax and other revenue from the redeveloped Mall will be sufficient to pay the debt service of any obligations that are issued to fund a portion of the City's $15,000,000.00 investment; and

WHEREAS, to memorialize the City's initial commitment to invest in the public elements of the Mall redevelopment, and to guide the terms and conditions of a development agreement, the City and the Developer entered into a Memorandum of Understanding, approved by the City Council on October 18, 2005; and

WHEREAS, consistent with the Memorandum of Understanding, the Developer has obtained Design Review Board approval of a project plan for the Mall redevelopment; and

WHEREAS, a development agreement for the Mall is authorized by RCW 36.70B.170 through 36.70B.210; and

WHEREAS, a lease with option to purchase of the Public Plaza and the City Garage Unit are authorized by Chapter 35.42 RCW; and

WHEREAS, as required by RCW 36.70B.200, the City held a public hearing on a development agreement for the Mall on ~~December 13, 2005,~~ January 3, 2006 and January 17, 2006; and

WHEREAS, having considered the testimony, staff analysis and comments at the public hearing, the City desires to enter into a development agreement with the Developer for redevelopment of the Mall; now, therefore

THE CITY COUNCIL OF THE CITY OF KIRKLAND DO ORDAIN AS FOLLOWS:

Section 1. The City Manager is authorized and directed to execute a development agreement with Coventry II DDR Totem Lake, LLC, substantially in the form of the Redevelopment Agreement for the Totem Lake Mall attached to this Ordinance.

Section 2. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.107, Kirkland Municipal Code, in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this 17th day of January, 2006.

Signed in authentication thereof this _____ day of January, 2006.

_____
MAYOR

Attest:

_____
City Clerk

Approved as to Form:

_____
Special Legal Counsel

PUBLICATION SUMMARY
OF ORDINANCE NO. 4034

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING, PLANNING, AND LAND USE AND AMENDING (FILE NO. DRC05-00005).

SECTION 1. Authorizes the City Manager to sign a Redevelopment Agreement for the Totem Lake Mall.

SECTION 2. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Kirkland Municipal Code 1.08.017 and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 20__.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

_____
City Clerk

CITY OF KIRKLAND
123 Fifth Avenue, Kirkland, WA 98033 (425) 587-3000
www.ci.kirkland.wa.us

MEMORANDUM

To: Kirkland City Council

From: Kirkland Transportation Commission, Dan Fisher, Chair

Date: January 5, 2005

Subject: Speed Limit Policy

BACKGROUND

As part of the Commission's 2005 work plan, the City Council asked the Transportation Commission to establish a policy for setting speed limits. During the past year we have reviewed technical information, heard from interested citizens and considered various approaches to setting speed limits. We presented our findings at the January 3, 2006 Council meeting and Council asked that a seventh principle be added. That principle describes reduction of operating speeds through means other than lowering speed limits.

POLICY

Policy principles

1. This policy is one of the Public Works Administrative Policies and is for use on collector and arterial streets.
2. Kirkland streets are posted at one of three speed limits: 25; 30; or 35 MPH.
3. Changes to existing speed limits should generally occur in 5 MPH increments.
4. Posted speed limits are based on the 85th percentile of prevailing speeds as measured on the roadway in question. Figure 1 shows the relationship between prevailing and posted speed.
5. As shown in Figure 1, for certain prevailing speeds, more than one speed limit could be selected for posting. These prevailing speeds are shown near the striped arrows on the prevailing speed side of Figure 1. In these cases the higher posted speed should be used unless special conditions are present. Typical special conditions are shown in note 3 of Figure 1.
6. Posted speed limits should be reasonable, safe and based on engineering/traffic studies.
7. When there is a need to reduce operating speeds, consideration should be given to making traffic operational or physical changes.

Implementing the policy

1. Speed limit evaluations should take place when specific concerns are raised rather than on a routine basis.
2. Findings of all evaluations should be reported to the Transportation Commission
3. The Transportation Commission will report their findings to Council. The City Council makes the final decisions as to whether or not a speed limit should be changed.

DISCUSSION

This portion of the memo is intended to provide information about policy's basis.

What types of speed limit changes are covered by this policy?
Since changes are made in five MPH increments between 25, 30 and 35 MPH, this leaves four changes as shown in the shaded boxes below:

Possible speed limit changes

To	From		
	25 MPH	30 MPH	35 MPH
25 MPH	X	Lower by 5 MPH	Lower by 10 MPH
30 MPH	Raise by 5 MPH	X	Lower by 5 MPH
35 MPH	Raise by 10 MPH	Raise by 5 MPH	X

The policy is for use on collector and arterial streets. The speed limit on local streets is 25 MPH.

Are there state laws that govern speed limits set by local governments like Kirkland?
RCW § 46.61.415 requires local agencies to perform an "engineering and traffic investigation" to support posting of speed limits which are "reasonable and safe." After reviewing the speed limit policies of multiple jurisdictions and agencies we found that without exception they were based on similar principles. School zone speed limits are also covered by RCW and are time-of-day speed limits near schools.

Why is the 85th percentile speed used as a basis for the posted speed limit?
Setting speed limits based on the prevailing speed of traffic is common and accepted practice across the US and in other countries as well. Typically, measurement of the 85th percentile speed (the speed at which 85% of the traffic is traveling at or below) serves as the method for determination of the prevailing speed. The logic behind this is as follows: Since most drivers will operate at speeds that are safe and reasonable, measuring the prevailing speed of traffic is a simple and fact-based method for establishing a posted speed limit. This is the key tenet of our policy.

How is the prevailing speed determined?
Automatic counters are used to measure speeds for several days. This typically results in thousands of data points. Peak and off-peak observations are used together to determine the 85th percentile speed.

How is the appropriate posted speed determined once the 85th percentile speed is known?
Figure 1 shows the relationship between prevailing and posted speed. Note that it is skewed to recommend a posted speed just slightly lower than the prevailing speed. This recognizes most citizens' support for lower rather than higher speed limits.

For some prevailing speeds, Figure 1 allows more than one posted speed. How do you pick which posted speed to use?
As shown in Figure 1, for certain prevailing speeds, more than one speed limit could be selected for posting. These prevailing speeds are shown next to the striped arrows on the prevailing speed side of Figure 1. In these cases the higher posted speed should be used unless special conditions are present. For example, an 85th percentile speed of 31 MPH could be posted at 25 or 30 MPH. In this example, the speed limit should be posted at 30 MPH unless conditions warrant a lower speed limit. Examples of these conditions are indicated on Figure 1, but we do not intend for that list to be an exhaustive one. Staff should evaluate and consider the conditions on a consistent but case by case basis.

Why does the policy have so much "wiggle room"?
We have intentionally built flexibility into the policy. While this does not give a predetermined precise answer for each and every application, it makes for a policy that is better suited to a wide range of conditions.

Why does the policy support a higher speed limit even if drivers are already going too fast?
Part of the answer to this question is contained in the answer to why the 85th percentile speed is used (see above). Further, based on the information we have reviewed, we conclude that *prevailing speeds do not change when the speed limit alone is changed*. This is an important concept and based on our discussions with citizens it is one that most people find counterintuitive. It means that if the prevailing speed is perceived to be too high, a reduction in the speed limit alone is not adequate to lower speeds. Perhaps the most practical evidence in support of the fact that speed limits do not, by themselves, alter travel speeds is experienced on roadway segments where the speed limit "feels too low." It is this "feel" that is the most important factor in determining how fast drivers will travel. When speeds are measured on streets where the speed limit feels too low, it is usually found that the 85th percentile speed is well above the posted speed limit.

If the speed limit can't be lowered, but cars are still traveling too fast, what else is available?
The most effective way to alter the travel speed is to change the feel of the road so that drivers will tend to drive more slowly. This type of change is often difficult and expensive to accomplish. Nonetheless, locations where speeds are perceived to be too high should be considered for measures to reduce prevailing speeds. There is a wide range of such arterial traffic calming measures, but typical examples include medians, curb bulb-outs, and landscape strips between sidewalk and curbs. Land use characteristics such as building fronts which are close to the street are also useful although such changes usually take place over relatively long time periods. Once prevailing speeds are reduced, the speed limit can lowered.

Prevailing speeds might be lowered by lowering the speed limit, why not try it?
It is common for those who support a speed limit not in keeping with the prevailing speed to argue that lowering the speed limit has no negative effects. Speed limits that are too low do have several negative effects. First, they may not be in keeping with RCW requirements for reasonableness. Second, complaints are received from those who think that drivers should be traveling closer to the speed limit. These complaints are extremely difficult to address without committing unreasonably high levels of enforcement personnel. Low speed limits also create the feeling described above of a speed limit that is too low which leads to frustration and complaints from drivers. Some other negative consequences include general disregard for speed limits, dangerous maneuvers by frustrated drivers –both those who wish travel faster and those who think all should follow the low speed limit– and inconsistency between speed limits on similar roadways.

Were other methods for determining speed limits considered?
In our discussions with citizens we heard proposals for three other methods for establishing speed limits. One was to let neighborhood associations vote to determine an appropriate speed limit. We feel that this would violate the RCW requirements of basing speed limits on an engineering and traffic investigation and possibly the requirement that speed limits that be safe and reasonable.

Another citizen proposed a much more detailed approach to setting the speed limit. It involved detailed quantitative evaluation of a series of factors for each speed limit considered. We viewed this approach as involving more analysis than is necessary given the effort necessary to develop and implement it. This conclusion is based mainly on Staff comments that speed limit review has been requested on only three to five sections of roadway in the past 12 years. Also, those who are unhappy with the outcome would have a series of factors and ratings to debate; instead of making decisions less subject to speculation, this more detailed approach might make them made more so.

Rising out of a concern for more consistency between speed limits, it was proposed that one speed limit be proposed for all streets or that speed limits be posted based on street functional classification. While we felt that consistency of speed limits between sections of the same roadway is a valid concern, it should not be the only factor considered nor should it outweigh prevailing speed as the primary factor. Consistency between speed limits on adjacent roadway segments should be considered when choosing a posted speed. (see discussion of Figure 1 above and note 3 on Figure 1).

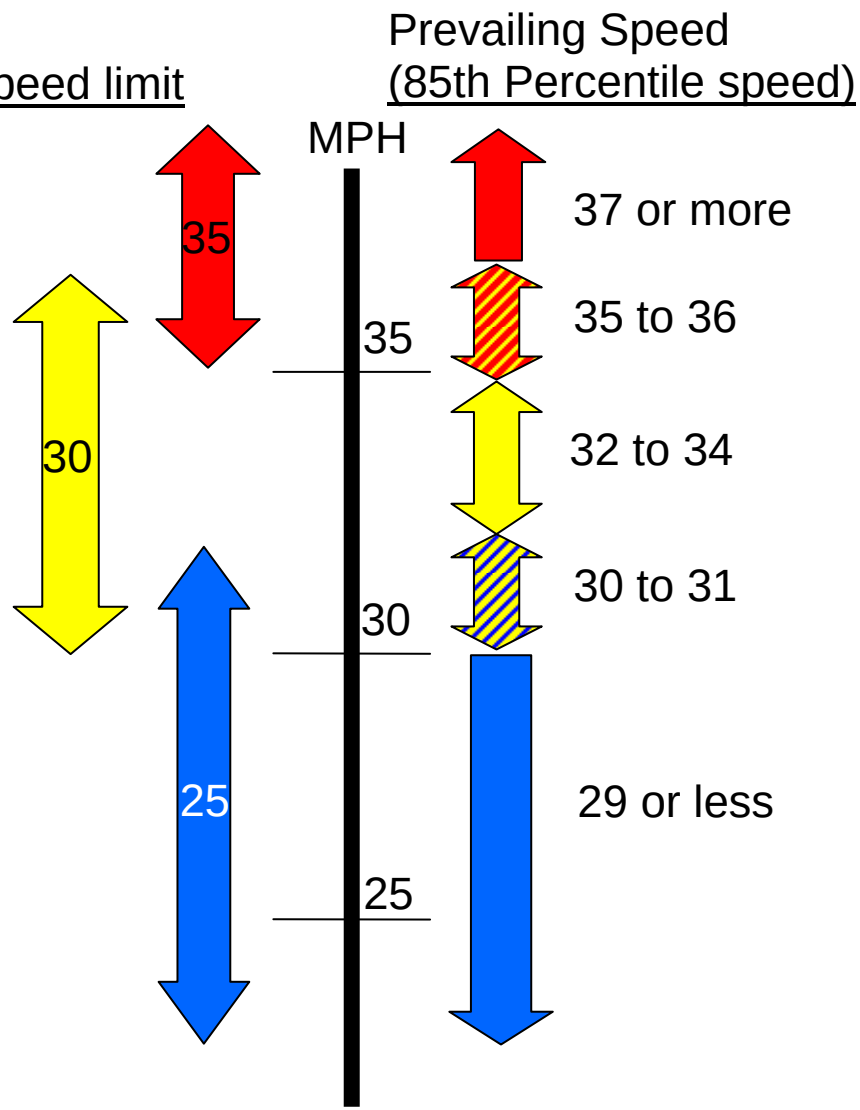
Figure 1. Relationship between prevailing and posted Speed

Instructions for use

1. Find the prevailing speed on the right hand side of the chart.

2. Follow straight left to the appropriate posted speed limit. Speed limit is set at 25, 30 or 35 MPH.

3. When the prevailing speed is in one of the striped areas, the higher posted speed should be used unless special conditions warrant otherwise. Special conditions include the nature of hills and curves, accident history, land use patterns and speed limits on adjacent road segments.



CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Daryl Grigsby, Public Works Director
Ray Steiger, P.E., Capital Projects Manager

Date: January 9, 2006

Subject: SEWER MAIN EXTENSION PROGRAM – CLARIFYING ORDINANCE

RECOMMENDATION:

It is recommended that the City Council adopt the attached Ordinance clarifying the City's intent to require repayment of the sewer main extension charge upon refinancing of the property in certain cases, and to provide notice to owners of benefited properties of the applicable lien, connection and extension charge payment requirements.

BACKGROUND DISCUSSION:

The sewer main extension program was adopted in 1998 giving the City the authority to extend sewer lines to those areas of Kirkland, primarily North and South Rose Hill, where septic systems are aged (30-40 years old) and beginning to fail. At that time there were an estimated 1,500 properties that were served by septic systems and did not have economical means to connect to the sanitary sewer system. One of the primary benefits of the program is to safeguard the environment which could be detrimentally impacted by poorly maintained or failed septic systems. The program is unique in that beneficiaries of the sewer line that do not connect upon construction of the new sewer lines, can delay payment of the extension charge for up to ten years after the time of construction with interest accruing during the delay period. Upon connection to the sewer line, the property owner can enter into a low interest loan agreement with the City to pay back the extension charge over ten years. Upon sale of the property, the entire extension charge is due and owing.

The first three "rounds" of the program were constructed in 1999, 2001 and 2003; the fourth (2005) round is now under construction. In the first four rounds, approximately 320 properties were provided with access to sewer lines, and to date, over 13,000 feet of sewer lines have been constructed under the program. The total cost of the 1999, 2001 and 2003 programs was $2,719,000, and individual assessments have ranged from $8,000 to $12,000. To date, approximately $1,716,000 (63%) has been reimbursed to the utility: 140 property owners have paid in full, 64 property owners have active ten-year loan agreements with the City, and 33 are "inactive" accounts. An inactive account is one that has had no action on the part of the property owner to pay to connect to the sewer line; at ten years after construction of the sewer line, the City requires that payment be made. All unpaid properties have information on their title reports indicating the presence of these assessments.

Most likely due to a strong housing market and low interest rates in last few years, several properties were sold and many were refinanced (approximately 35% of all full payments have been upon refinancing). Through these processes, more assessments were paid in full than had been originally expected. If interest rates continue to remain low, it is anticipated there will be continued early payments of assessments. One issue that has been raised recently, however, is that the sewer extension program does not specifically identify refinancing as a "trigger" for payoff of extension charges; sale of property is the only trigger for full payoff.

During the July, 2005 CIP study session, staff raised this issue and confirmed with City Council that the original intent of the program was to require payoff of extension charges upon sale *and* refinancing of properties. This issue was brought back to the Council at the January 3, 2006 meeting, and at that meeting, Council expressed concerns about requiring payoff at refinancing. As such, staff has reviewed the program objectives, its financial status, looked at the concerns raised by Council and has revised the language of the ordinance. As amended, if a property owner "requests that the City waive its right to collect", or in other words, if the City is requested to subordinate its lien, full payment will not be required upon refinancing. Working with the City Attorney's office, staff has modified the language of KMC 15.38.030(d)(4) to clarify this intent.

The language modifications as proposed do not change current KMC requirements for property owners to connect to the City sewer system if they are within 330 feet of the sewer main and go through a significant remodel or addition process. In the case where a property owner is currently served by a septic system and proposes to perform improvements to their property, during the application process they will be required to contact the King County Department of Health, who regulates property on septic system. If the County determines that new "loading" is being introduced into the system, typically the addition of bedrooms is their threshold, and the property is within the established limits (330' in the KMC), they will be required to hook up to the sewer system. This requirement applies independent of how the sewermain was financed (i.e. developer extension, City, etc.). The property owner in this situation, if within a sewer extension program area, would be required to enter a contract for repayment with the City – they are not required to pay the assessment in full, but may elect to repay the assessment over up to a ten year period after connection.

Recently real estate agents and others have questioned the authority of the City to place a lien on property for the unpaid extension charge. The City has authority to place such a lien on property pursuant to RCW 35.67.360. To avoid questions regarding such lien authority in the future, however, staff recommends that KMC 15.38.030(d) be amended to cite this statute. Further, staff recommends that the property owners who benefit from the sewer line, but elect not to connect immediately to the sewer line, be required to acknowledge in writing the existence of such lien, as well as the requirements for paying the extension charge in the future, so that there is no misunderstanding when the City requests payment of the extension charge in the future. The written acknowledgement would be recorded with the King County office of records and elections, so that real estate agents and others who deal with the property also are placed on notice of such requirements and lien. Again, working with the City Attorney's office and special legal counsel, staff has modified the language of KMC 15.38.010 and 15.38.030(d) to accomplish this notification.

Attachment

Cc: Robin Jenkinson, City Attorney
Bill Evans, Assistant City Attorney
Marilynne Beard, Director of Finance and Administration
Eileen Sanders, Public Works ASA IV

ORDINANCE 4032

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SEWER MAIN EXTENSIONS, AND AMENDING SECTIONS 15.38.010 AND 15.38.030(d) OF THE KIRKLAND MUNICIPAL CODE.

WHEREAS, the City Council desires to clarify the process for delaying connection to a City constructed sewer main extension, and to provide for payment of the extension charge upon refinancing of property;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Section 15.38.010 of the Kirkland Municipal Code is amended to read as follows:

The owner of an existing single-family or multifamily dwelling within the Kirkland sewer system service area, having a failed or failing septic tank system, may request to connect to the public sewer system, even though such property may be located more than three hundred thirty feet from an existing sewer main (requiring construction of a sewer main extension in order to be connected). Whenever construction of a sewer main extension is required to make such connection possible, the city shall plan, design and construct such extension within a reasonable time pursuant to the criteria for sewer main extension projects and construction priorities authorized by Section 15.38.040 of this chapter. Upon completion of construction and acceptance of the sewer main extension, the city shall:

(a) ~~give~~Give notice to the requesting property owner to connect ~~that~~ the property ~~shall, within thirty days of receipt of the notice, connect~~ to the public sewer system within thirty days of receipt of the notice; and

(b) Give notice to ~~. Other~~other property owners benefited by the extension construction to ~~may also~~ connect the property to the public sewer system within thirty days of receipt of the notice; provided, that in lieu of connection, such property owners may delay connection of the property and payment of the extension charge pursuant to Section 15.38.030 by executing a written request and authorization, in a form approved by the director of public works in accordance with Section 15.38.040, that requests delay of connection and payment and that acknowledges filing of the document described in Section 15.38.040(c) and creation of the lien of Section 15.38.030(d)(5). The department of public

works shall record the written request with the King County office of records and elections.

Section 2. Section 15.38.030(d) of the Kirkland Municipal Code is amended to read as follows:

(d) The extension charge shall be payable to the city as follows:

(1) For a requesting property owner and for other property owners who do not execute a written request and authorization to delay payment of the extension charge, ~~Upon~~ upon receipt of the thirty-day notice to connect ~~given by the city to a requesting property owner required by~~ pursuant to Section 15.38.010 ~~of this chapter , or as to other property owners upon connection of the lot or parcel to the public sewer~~; or

(2) For other property owners who execute a written request and authorization to delay payment of the extension charge pursuant to Section 15.38.010, upon connection of the property to the public sewer system pursuant to Section 15.28.010, or ~~As to those lots or parcels which have a properly functioning septic tank system and are not required by Section 15.28.010 of this code to connect to public the public sewer system or vacant parcels of land,~~ ten years following acceptance of the construction of the extension, whichever occurs first; or

(3) The city may enter into contracts with the owners of existing single-family residences, multifamily residences and businesses that meet criteria specified by the department of public works for payment of extension charges over ten successive years instead of as a lump sum. In addition to the installment payment on the extension charge principal, each time payment shall include an administrative handling fee to be established by the finance director, together with interest on the unpaid balance of the extension charge principal at a rate to be set quarterly on the first working day of the quarter by the finance director, which shall not exceed ninety-five percent of the market yield to maturity of the most recently issued U.S. Treasury note. The interest rate and administrative handling fee to be set quarterly shall remain in effect for said contracts for the term of the contract. The interest rate shall be set quarterly for time payment contacts entered into during that current year. The contract shall provide that the first annual payment shall be payable as of July 1st following connection with

the remaining payments due on July 1st of each successive year.

(4) Notwithstanding the foregoing, the entire amount of the extension charge or any remaining unpaid balance thereof shall be payable in full at the time of closing upon sale of the property, or upon refinancing of the property unless the owner requests that the City waive its right to collect this charge out of the refinance proceeds, whether or not the property has been connected to the sewer extension.

(5) Pursuant to RCW 35.67.360, ~~The~~the extension charge or any unpaid balance of the time payment contract shall be secured by a lien against the connecting property. The lien shall attach as of the date of recording of the document required to be recorded by the department of public works by subsection (c) of this section and continue thereafter until the extension charge or any unpaid balance of the time payment contract has been fully paid.

Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006.

Signed in authentication thereof this _____ day of _____, 2006.

_____
MAYOR

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

CITY OF KIRKLAND
Information Technology Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3050
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Janice Perry, MultiMedia Communications Manager
Brenda Cooper, Chief Information Officer

Date: January 9, 2006

Subject: Title 26 Telecommunications Code Amendments

RECOMMENDATION

The City Council adopts the attached ordinance amending Title 26 of the Kirkland Municipal Code.

BACKGROUND DISCUSSION

Title 26 of the Kirkland Municipal Code establishes local policy, guidelines, standards and time frames concerning telecommunications and cable providers and services.

A brief summary of significant changes:

- Definitions for cable system, channel, franchise fee, gross revenues.
- Some definitions were moved from the cable section to the general definitions section of Title26.
- Added a section on customer service.
- The title was significantly re-formatted to clarify what portions of the title apply to telecommunications, to cable, or to both.
- Changes have also been proposed that would eliminate conflict between our ordinance, federal legislations and rules under the Federal Communications Commission.

A copy of the proposed ordinance was sent to Comcast and Verizon for their review and comments. Staff met with each company, and made some changes based on each of their requests. Not all changes proposed by Comcast or Verizon were made. Staff worked with legal counsel and consultants to make sure the ordinance is in line with federal and state law, is equitable and fair for any telecommunications or cable business providing service to the Kirkland community and protects the City.

This ordinance amending Title 26 requires one reading.

Pc: Oskar Rey, Assistant City Attorney

ORDINANCE 4033

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TELECOMMUNICATIONS AND CABLE SERVICES.

The City Council of the City of Kirkland do ordain as follows:

Section 1. Title 26 of the Kirkland Municipal Code is hereby amended to read as follows:

Title 26

TELECOMMUNICATIONS

Chapters:

26.04 Telecommunications
26.08 Registration
26.12 License
26.16 Franchise
26.20 Cable Franchise
26.24 Conditions of Grant of License~~,~~ ~~Franchise~~ or ~~Cable~~ Franchise
26.28 Construction of Telecommunications Facilities
26.32 Fees
26.36 Miscellaneous

Chapter 26.04
TELECOMMUNICATIONS

Sections:

26.04.010 Purpose.
26.04.020 Definitions.
26.04.025 Assertion of state-wide grant.
26.04.030 Registration and fees.
26.04.040 License and fees.
26.04.050 Franchise and fees.
26.04.060 Cable franchise and fees.
26.04.070 Application to existing franchise ordinances and agreements.
26.04.080 ~~Penalties~~ Fines.
26.04.090 Other remedies.
26.04.100 Further rules and regulations.
26.04.110 Severability.

26.04.010 Purpose.

The purpose of this title is to:

(1) Establish a local policy concerning telecommunications providers and carriers and services;

(2) Establish clear and nondiscriminatory local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications providers and carriers and services;

(3) Promote competition in telecommunications;

(4) Minimize unnecessary local regulation of telecommunications providers and carriers and services;

(5) Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the city;

(6) Permit and manage reasonable access to the public rights-of-way of the city for telecommunications purposes on a competitively neutral basis;

(7) Conserve and manage the limited physical capacity of the public rights-of-way held in public trust by the city;

(8) Assure that the city's current and ongoing costs of granting and regulating private access to and use of the public rights-of-way are fully paid by the persons seeking such access and causing such costs;

(9) Secure fair and reasonable compensation to the city and the residents of the city, in a nondiscriminatory manner, to the extent permitted by law, for permitting private use of the rights-of-way;

(10) Assure that all telecommunications carriers and providers ~~providing facilities or services~~ within the city comply with the applicable ordinances, rules and regulations of the city;

(11) Assure that the city can continue to fairly and responsibly protect the public health, safety and welfare;

(12) Enable the city to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

26.04.020 Definitions.

Terms used in this title shall have the following meanings:

(1) "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

(2) "Cable Acts" means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, as amended by portions of The Telecommunications Act of 1996, and as hereafter amended.

(3) "Cable operator" means a ~~telecommunications carrier~~ person providing or offering to provide "cable service" within the city as ~~that term~~ "cable operator" is defined in the Cable Acts.

(4) "Cable service" shall have the same meaning as defined in the Cable Acts.

(5) "City" means the city of Kirkland.

(6) "City property" means all real property now or hereafter owned by the city whether in fee ownership or other interest.

(7) "Excess capacity" means the volume or capacity in any existing or future duct, conduit, manhole, handhold or other utility facility within the right-of-way that is or will be available for use for additional telecommunications facilities.

(8) "FCC" or "Federal Communications Commission" means the federal administrative agency, or lawful successor, authorized to regulate and oversee cable operators, telecommunications carriers, services and providers on a national level.

(9) "Grantee" means ~~both~~ licensees and franchisees granted certain rights and obligations more fully described herein, as well as telecommunications carriers or providers asserting a state wide grant based on a predecessor telephone or telegraph company's existence at the time of the adoption of the Washington State Constitution.

(10) "Overhead facilities" means utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

(11) "Person" means corporations, companies, associations, ~~joint stock companies,~~ firms, partnerships, limited liability companies, government entities, other entities and individuals.

(12) "Public ways" includes the surface of and space above and below any real property in the city in which the city has a regulatory interest, or interest as a trustee for the public, as they now or hereafter exist, including, but not limited to, all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the city, and any unrestricted public or utility easements established, dedicated, platted, improved or devoted for public utility purposes; provided, however, this shall not include public parks for which a separate authorization and agreement to utilize any part of same shall be required from the city.

(13) "Rights-of-way" means all ~~city property and~~ applicable public ways~~, collectively,~~ within the city.

(14) "State" means the state of Washington.

(15) "Supporting structure" means the trench, pole, or conduit used to provide a path for placement of telecommunications facilities.

(16~~5~~) "Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Washington Utilities and Transportation Commission, to allow its use by a telecommunications carrier for a pole attachment.

(17~~6~~) "Telecommunications carrier" includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property

within the city, used or to be used for the purpose of offering telecommunications service.

(18~~7~~) "Telecommunications facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices and apparatus used, operated, owned or controlled by a telecommunications company to facilitate the provision of telecommunications service ~~the plant, equipment and property within the city used to transmit, receive, distribute, provide or offer telecommunications service~~.

(19~~8~~) "Telecommunications provider" includes every person who provides telecommunications service over telecommunications facilities.

(20~~19~~) "Telecommunications service" means the providing or offering for rent, sale or lease, or in exchange for other value received, the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium except to the extent that the service provided or offered falls within the definition of "cable service" under this Section.

~~(20) "Underground facilities" means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.~~

(21) "Usable space" means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Washington Utilities and Transportation Commission.

(22) "Utility facilities" means the plant, equipment and property including, but not limited to, the poles, pipes, mains, conduits, ducts, ~~cables,~~ wires, plant and equipment located under, on or above the surface of the ground within rights-of-way and used or to be used for the purpose of providing utility or telecommunications services.

(23) "Washington Utilities and Transportation Commission" or "WUTC" means the state administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers in the state of Washington to the extent prescribed by law.

26.04.025 Assertion of state-wide grant.

The city may request, but not require, that a telecommunications carrier or provider with a state-wide grant to occupy right-of-way based on a predecessor telephone or telegraph company's existence at the time of the adoption of the Washington State Constitution obtain a license or franchise pursuant to Chapters 26.12 and 26.16 of this title. A telecommunications carrier or provider asserting such a state-wide grant shall register with the city pursuant to Chapter 26.08 of this title and, in so doing, provide the city with a statement detailing the basis for the assertion of a state-wide grant.

26.04.030 Registration and fees.

Except as otherwise provided herein, all telecommunications carriers or providers engaged in the business of transmitting, supplying or furnishing of telecommunications service originating, terminating or existing within the city shall register with the city pursuant to this title and pay all the fees as provided herein.

26.04.040 License and fees.

Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in rights-of-way for the purpose of providing telecommunications service to persons and areas outside the city shall first obtain a license granting the use of such rights-of-way from the city pursuant to this title and pay all the fees as provided herein.

26.04.050 Franchise and fees.

Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in rights-of-way and to also provide telecommunications service to persons or areas in the city shall first obtain a franchise granting the use of such rights-of-way from the city pursuant to this title and pay all the fees as provided herein.

26.04.060 Cable franchise and fees.

~~Except as otherwise provided herein, a~~Any ~~telecommunications carrier~~ person who desires to construct, install, operate, maintain or locate ~~telecommunications~~ facilities in rights-of-way for the purpose of providing cable services shall first obtain a cable franchise from the city pursuant to this title and pay all the fees as provided herein and in the cable franchise.

26.04.070 Application to existing franchise ordinances and agreements.

Except as otherwise provided in this title, this title shall have no effect on any existing franchise agreement until:

(1) The expiration of said franchise agreement; or

(2) An amendment to an unexpired franchise agreement, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

26.04.080 ~~Penalties~~ Fines.

Any person found violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this title shall be guilty of a misdemeanor. Upon conviction any person violating any provision of this title shall be subject to a fine of up to one thousand dollars or by imprisonment for a period of up to ninety days, or both such fine and imprisonment. A separate and distinct

violation shall be deemed committed each day on which a violation occurs or continues.

26.04.090 Other remedies.

Nothing in this title shall be construed as limiting any other remedies that the city may have, at law or in equity, for enforcement of this title.

26.04.100 Further rules and regulations.

The city manager or designee is authorized to establish further rules, regulations and procedures with respect to the city's authority to manage, regulate and control public rights of way for the implementation of this title. Except in cases of emergency, the city shall attempt to notify and provide an opportunity for comment to persons who may be affected by rules, regulations and procedures adopted pursuant to this Section.

26.04.110 Severability.

If any section, subsection, sentence, clause, phrase, or other portion of this title, or its application to any person, is for any reason declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

Chapter 26.08
REGISTRATION

Sections:

26.08.010 Registration required.
26.08.020 Purpose of registration.
26.08.030 Exception to registration.

26.08.010 Registration required.

All telecommunications carriers having telecommunications facilities within the corporate limits of the city, or all telecommunications carriers or providers that offer or provide telecommunications service within the city, in whole or in part, shall register with the city hereunder on forms provided by the city ~~clerk~~ which shall include the following:

(1) The identity and legal status of the registrant, including any affiliates;

(2) The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement;

(3) A description of registrant's existing or proposed telecommunications facilities within the city;

(4) Information sufficient for the city to determine whether the registrant is subject to public way licensing or franchising under this title;

(5) Information sufficient for the city to determine whether the transmission, origination or receipt of the telecommunications services provided or to be

provided by the registrant constitutes an occupation or privilege subject to any municipal tax, permit, license or franchise fee;

(6) To the extent allowed by law, copies of the applicant's registration filed with the Washington Utilities and Transportation Commission pursuant to Chapter 480-121 WAC. Alternatively, applicant shall submit a statement detailing the basis (along with pertinent supporting materials) for its authorizations to provide telecommunications services or, in the further alternative, the reasons that registration with the WUTC is not required;

(7) To the extent allowed by law, information sufficient for the city to determine that the applicant has applied for and received any permit, operating license or other right or approvals required by the Federal Communications Commission to provide telecommunications services or facilities;

(8) Such other information as the city may reasonably require with respect to its authority to manage, regulate and control public rights of way.

26.08.020 Purpose of registration.

The purpose of registration is to:

(1) Provide the city with accurate and current information necessary for the management and regulation of city right-of-way;

(2) Assist the city in enforcement of this title;

(3) Assist the city in the collection and enforcement of any municipal taxes, franchise fees, license fees or charges that may be due to the city; and

(4) Assist the city in monitoring compliance with local, state and federal laws.

26.08.030 Exception to registration.

A person which provides telecommunications services solely to itself, its affiliates or members between points in the same building, or between closely located buildings under common ownership or control; provided, that such company or person does not use or occupy any rights-of-way of the city or other ways within the city, is excepted from the registration requirements pursuant to this title.

Chapter 26.12
LICENSE

Sections:

26.12.010 License.
26.12.020 License application.
26.12.030 Determination by the city.
26.12.040 ~~Agreement~~ Acceptance.
26.12.050 Nonexclusive grant.
26.12.060 ~~Rights granted~~ License only.
26.12.070 Term of grant.

26.12.080 License route.
26.12.090 Construction permits.
26.12.100 Compensation to city.
26.12.110 Service to city users.
26.12.120 Amendment of grant.
26.12.130 Renewal applications.
26.12.140 Renewal determinations.
26.12.150 Obligation to cure as a condition of renewal.

26.12.010 License.

Except as otherwise provided in this title, a license shall be required of any telecommunications carrier who desires to occupy any rights-of-way with any telecommunications facilities for the purpose of providing telecommunications services to persons or areas outside the city.

26.12.020 License application.

Any person that desires a license hereunder shall file a written license application with the city ~~clerk~~. Within twenty-eight calendar days after the date of submittal of the application, the city ~~clerk~~ shall provide the applicant a written determination of whether the application is complete, and if the application is not complete, what must be submitted by the applicant in order for the application to be complete. The procedures for approval of a license and the requirements for a complete application shall be available in written form.

26.12.030 Determination by the city.

Within one hundred twenty days after receiving a complete application hereunder, the city shall make a determination granting or denying the application in whole or in part. The one-hundred-twenty-day period may be extended by a specific number of days or to a defined date by written agreement between the city and the applicant. If the application is denied, the determination shall include the reasons for denial. The reasons for denial of a license shall be supported by substantial evidence contained in a written record. The following standards shall apply when determining to grant or deny the application:

(1) The capacity of the rights-of-way to accommodate the applicant's facilities;

(2) The capacity of the rights-of-way to accommodate additional utility and telecommunications facilities if the application is granted;

(3) The damage or disruption, if any, to public or private facilities, improvements, service, travel or landscaping if the application is granted, giving consideration to an applicant's willingness and ability to mitigate and/or repair same;

(4) The public interest in minimizing the cost and disruption of construction within the rights-of-way;

(5) The availability of alternate routes or locations for the proposed facilities that are reasonable for placement of the proposed facilities;

(6) Such other factors as may relate to the city's authority to manage, regulate and control public rights-of-way.

26.12.040 ~~Agreement~~ Acceptance.

No license granted hereunder shall be effective until the license has been approved by the city council by ordinance and the applicant has accepted the license, in writing, in a form acceptable to the city. The license shall set forth the particular items and provisions under which the license to occupy and use rights-of-way will be granted. The city shall make reasonable efforts to treat all applicants in a competitively neutral and non-discriminatory manner. ~~All licenses granted pursuant to this title shall contain substantially similar terms which, taken as a whole and considering relevant characteristics of applicants, do not provide more or less favorable terms and conditions than those required of other licensees.~~

26.12.050 Nonexclusive grant.

No license granted hereunder shall confer any exclusive right, privilege or license to occupy or use the rights-of-way for delivery of telecommunications services or any other purposes.

26.12.060 ~~Rights granted~~ License only.

(a) No license granted hereunder shall convey any right, title or interest in rights-of-way but shall be deemed a license only to use and occupy the rights-of-way for the limited purposes and term stated in the grant.

(b) No license granted hereunder shall excuse a licensee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use rights-of-way.

(c) No license granted hereunder shall be construed as any warranty of title.

26.12.070 Term of grant.

Unless otherwise specified in a license agreement, a license granted hereunder shall be in effect for a term of not more than five years.

26.12.080 License route.

A license granted hereunder shall be limited to a grant of specific rights-of-way and defined portions thereof, as may be indicated in the license agreement.

26.12.090 Construction permits.

All licensees are required to obtain construction and right-of-way permits and pay all fees as required by the city; provided, however, that nothing in this title shall prohibit the city and a licensee from agreeing to alternative plan

review, permit and construction procedures in a license agreement; provided such alternative procedures provide substantially equivalent safeguards for reasonable construction practices. Except as provided in this section, the city shall grant, condition or deny construction for right-of-way permits in writing within thirty days of receiving a complete application unless a licensee has consented to a different time period or has not obtained a license from the city. The city shall notify the licensee in writing if more than thirty days are required to process the permit. The notice shall state the amount of additional time required, and the reasons for the additional time. Conditioned or denied permits may be appealed to the city hearing examiner within fourteen days of the date of the permit or permit denial.

26.12.100 Compensation to city.

To the extent permitted by law, each license granted hereunder is subject to the city's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for use of property pursuant to the license; provided nothing in this title shall prohibit the city and a licensee from agreeing upon the compensation to be paid.

26.12.110 Service to city users.

A licensee may be permitted to offer or provide telecommunications services to persons or areas within the city upon submitting an application for franchise approval pursuant to this title.

26.12.120 Amendment of grant.

(a) A new license application and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in rights-of-way which are not included in a license previously granted hereunder.

(b) If ordered by the city to locate or relocate its telecommunications facilities in rights-of-way not included in a previously granted license, the city shall grant a license amendment without further application.

(c) A new license application and grant shall be required of any telecommunications provider that desires to add to or modify the telecommunications services provided pursuant to a license previously granted, if the proposed telecommunications services will cause the provider to occupy more or different rights-of-way.

26.12.130 Renewal applications.

A licensee that desires to renew its license hereunder shall, not more than one hundred eighty days nor less than ninety days before expiration of the current license, file an application with the city for renewal of its license which shall include the following information:

(1) The applicable information required pursuant to the license application.

(2) Such other information as may relate to the city's authority to manage, regulate and control public rights of way ~~Any other information reasonably required by the city~~.

26.12.140 Renewal determinations.

Within ninety days after receiving a complete application hereunder, the city ~~clerk~~ manager shall make a determination on behalf of the city granting or denying the renewal application ~~in whole or in part~~. If the renewal application is denied, the determination shall include the reasons for nonrenewal. The standards enumerated in Section 26.12.030 of this chapter shall apply when determining to grant or deny the application, plus a determination of the applicant's compliance with the requirements of this title and the license agreement.

26.12.150 Obligation to cure as a condition of renewal.

No license shall be renewed until any ongoing violations or defaults in the licensee's performance of the license agreement, of the requirements of this title, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by the licensee has been approved by the city ~~clerk~~ manager.

Chapter 26.16
FRANCHISE

Sections:

26.16.010 Franchise.
26.16.020 Franchise application.
26.16.030 Determination by the city.
26.16.040 ~~Agreement~~ Acceptance.
26.16.050 Nonexclusive grant.
26.16.060 ~~Rights granted~~ Franchise only.
26.16.070 Term of grant.
26.16.080 Franchise territory.
26.16.090 Construction permits.
26.16.100 Compensation to city.
26.16.110 *Repealed.*
26.16.120 Service to the city.
26.16.130 Amendment of grant.
26.16.140 Renewal applications.

26.16.150 Renewal determinations.
26.16.160 Obligation to cure as a condition of renewal.
26.16.170 Personal wireless facilities in right-of-way.

26.16.010 Franchise.

Except as otherwise provided in this title, a franchise shall be required of any telecommunications carrier who desires to occupy rights-of-way and to provide telecommunications services to any person or area in the city.

26.16.020 Franchise application.

Any person that desires a franchise hereunder shall file a written franchise application with the city ~~clerk~~. Within twenty-eight calendar days after the date of the submittal of the application, the city ~~clerk~~ shall provide the applicant a written determination of whether the application is complete, and if the application is not complete, what must be submitted by the applicant in order for the application to be complete. The procedures for approval of a franchise and the requirements for a complete application shall be available in written form.

26.16.030 Determination by the city.

Within one hundred twenty days after receiving a complete application hereunder, the city shall make a determination granting or denying the application in whole or in part. The one-hundred-twenty-day period may be extended by a specific number of days or to a defined date by written agreement between the city and the applicant. If the application is denied, the determination shall include the reasons for denial. The reasons for denial of a franchise shall be supported by substantial evidence contained in a written record. The standards enumerated in Section 26.12.030 of this code shall apply when determining to grant or deny the application.

26.16.040 ~~Agreement~~ Acceptance.

No franchise shall be granted hereunder unless the franchise has been approved by the city council by ordinance and the applicant has accepted the franchise, in writing, in a form acceptable to the city. The franchise shall set forth the particular terms and provisions under which the franchise to occupy and use rights-of-way will be granted. The city shall make reasonable efforts to treat all applicants in a competitively neutral and non-discriminatory manner. ~~All franchises granted pursuant to this title shall contain substantially similar terms and conditions which, taken as a whole and considering relevant characteristics of the applicants, do not provide more or less favorable terms and conditions than those required of other franchisees.~~

26.16.050 Nonexclusive grant.

No franchise granted hereunder shall confer any exclusive right, privilege or franchise to occupy or use the rights-of-way for delivery of telecommunications services or any other purposes.

26.16.060 ~~Rights granted~~ Franchise only.

(a) No franchise granted hereunder shall convey any right, title or interest in the rights-of-way but shall be deemed a franchise only to use and occupy the rights-of-way for the limited purposes and term stated in the grant.

(b) No franchise granted hereunder shall excuse a franchisee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use rights-of-way.

(c) No franchise granted hereunder shall be construed as any warranty of title.

26.16.070 Term of grant.

Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be valid for a term of not more than ten years.

26.16.080 Franchise territory.

A telecommunications franchise granted hereunder shall be limited to the specific geographic area of the city to be served by the franchisee, and the specific rights-of-way and portions thereof, as may be identified in the franchise agreement.

26.16.090 Construction permits.

All franchisees are required to obtain construction and right-of-way permits and pay all fees for telecommunications facilities as required by the city; provided, however, that nothing in this title shall prohibit the city and a franchisee from agreeing to alternative plan review, permit and construction procedures in a franchise agreement; provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices. Except as provided in this section, the city shall grant, condition or deny construction for right-of-way permits in writing within thirty days of receiving a complete application unless a franchisee has consented to a different time period or has not obtained a franchise from the city. The city shall notify the franchisee in writing if more than thirty days are required to process the permit, the amount of additional time required, and the reasons for the additional time. Conditioned or denied permits may be appealed to the city hearing examiner within fourteen days of the date of the permit or permit denial.

26.16.100 Compensation to city.

To the extent permitted by law, each franchise granted hereunder is subject to the city's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for use of property pursuant to a franchise; provided nothing in this title shall prohibit the city and a franchisee from agreeing upon the compensation to be paid.

26.16.110 Nondiscrimination.

Repealed by Ord. 3796.

26.16.120 Service to the city.

The city may, in accordance with ~~Washington Laws of 2000, Chapter 83, Section 7~~RCW 35.99.070, and as it may hereafter be amended, require a franchisee that is constructing, relocating or placing ducts or conduits in public right-of-way to provide the city with additional duct, conduit or related structures.

26.16.130 Amendment of grant.

(a) A new franchise application and grant shall be required of any telecommunications carrier that desires to extend its franchise territory or to locate its telecommunications facilities in rights-of-way which are not included in a franchise previously granted hereunder.

(b) If ordered by the city to locate or relocate its telecommunications facilities in rights-of-way not included in a previously granted franchise, the city shall grant a franchise amendment without further application.

(c) A franchise application and grant shall be required of any telecommunications provider that desires to add to or modify the telecommunications services provided pursuant to a franchise previously granted, if the proposed telecommunications services will cause the provider to occupy more or different rights-of-way.

26.16.140 Renewal applications.

A franchisee that desires to renew its franchise hereunder shall, not more than one hundred eighty days (except as otherwise provided by federal law) nor less than one hundred twenty days before expiration of the current franchise, file an application with the city for renewal of its franchise which shall include the following information:

(1) The applicable information required pursuant to the franchise application.

(2) Such other information as may relate to the city's authority to manage, regulate and control public rights of way ~~Any other information reasonably required by the city~~.

26.16.150 Renewal determinations.

Within ~~one hundred twenty~~ ninety days after receiving a complete application hereunder from ~~cable franchisees, and within ninety days from other~~ telecommunications providers or carriers, the city ~~clerk~~ manager shall make a determination ~~on behalf of the city~~ granting or denying the renewal application ~~in whole or in part~~. If the renewal application is denied, the determination shall include the reasons for nonrenewal. The standards enumerated in Section 26.12.030 shall apply when determining to grant or deny ~~the~~ a renewal application, plus a determination of the applicant's compliance with the requirements of this title and the franchise ~~agreement~~.

26.16.160 Obligation to cure as a condition of renewal.

No franchise shall be renewed until any ongoing violations or defaults in the franchisee's obligations under the franchise ~~agreement~~, of the requirements of this title, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved by the city.

26.16.170 Personal wireless service facilities in right-of-way.

(a) The city may impose a site-specific charge pursuant to an agreement with a service provider of personal wireless services for:

(1) The placement of new structures in the right-of-way regardless of height, unless the new structure is the result of a city-mandated relocation, in which case the city will not charge the service provider if the previous location was not charged;

(2) The placement of replacement structures when the replacement is necessary for the installation or attachment of wireless facilities, and the overall height of the replacement structure and the wireless facility is more than sixty feet; or

(3) The placement of personal wireless service facilities on structures owned by the city located in the right-of-way; however, a site-specific charge shall not apply to the placement of personal wireless service facilities on existing structures unless the structure is owned by the city.

(b) The city is not required to approve a right-of-way use permit for the placement of a facility for personal wireless services that meets one of the criteria in this section absent such an agreement. If the parties are unable to agree on the amount of the charge, the service provider may submit the amount of the charge to binding arbitration by serving notice on the city. Within thirty days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or arbitrators shall determine the charge based on comparable siting agreements involving public land and rights-of-way. The arbitrator or arbitrators shall not decide any other disputed issues, including but not limited to size, location and zoning requirements. Costs of arbitration including compensation for the ~~arbitrator's~~ services of the arbitrator(s), must be borne equally by the parties participating

in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses in connection with the arbitration proceeding.

Chapter 26.20
CABLE FRANCHISE

Sections:

26.20.005 Purpose~~, effect~~ and applicability.
26.20.010 Definitions.
26.20.020 Terms of franchise.
26.20.030 Application.
26.20.040 Franchise fee.
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26.20.060 Police power.
26.20.070 ~~Rules and r~~Regulations ~~by the city~~.
26.20.075 Interference.
26.20.080 Technical standards.
26.20.090 Parental control devices.
26.20.100 ~~Conditions of grant of cable franchise and construction standards.~~Coordination of construction activities.
26.20.105 Damage to property.
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26.20.265 Restoration of rights-of-way.
26.20.270 Equalization of civic contributions.
26.20.280 Security fund.
26.20.290 Inconsistency.

26.20.005 Purpose~~, effect~~ and applicability.

No cable~~ communications company~~ operator may utilize city right-of-way, streets, ways or facilities without first being granted a franchise pursuant to this chapter. This chapter sets forth the procedures and terms applicable to all cable franchises (including renewals of existing franchises) to be granted by the city for cable services.

26.20.010 Definitions.

In addition to the definitions contained in Section 26.04.020 of this code, in construing the provisions of this chapter and any franchise entered into pursuant to this chapter, the following definitions shall apply:

(a) "Access channel" means any channel or portion thereof designated for access purposes or otherwise made available to transmit access programming.

(b) "Applicant" means any~~ provider or any~~ person~~, partnership, or company~~ who files an application for any permit necessary to install, maintain, or remove cable services or facilities.

(c) "Basic service" is the lowest service tier that includes the retransmission of local broadcast television signals.

(d) "Bi-directional" means that the cable system is capable of providing both upstream and downstream transmissions.

(e) "Broadcast signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a cable system by antenna, microwave, satellite dishes or any other means.

~~(f) "Cable Act" means Title VI of the Communications Act of 1934, as amended, 47 U.S.C. §§ 521 et. seq.~~

(~~g~~f) "Cable~~ communications~~ system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service~~ and other communications services to subscribers.~~ which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with 47 U.S.C. 573 and federal regulations; or (5) any facilities of any electric utility used solely for operating its electric utility systems.

~~(h) "Cable internet service" means any service offered by a franchisee whereby persons receive access to the internet through the cable system.~~

(~~i~~g) "Cable services" means (1) the one-way transmission to subscribers of video programming or other programming service, and (2) subscriber interaction, if any, which is required for the selection or use~~ by the subscriber~~ of such video programming or other programming service~~, or as defined in the Cable Act~~.

(~~j~~h) "Channel" means~~ a portion of the frequency band capable of carrying a video programming service or combination of video programming services whether by analog or digital signal.~~ a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by federal law or regulation).

(~~k~~i) "Downstream" means carrying a transmission from the head-end to remote points on the cable~~ communications~~ system or to interconnection points on the cable~~ communications~~ system.

(~~l~~j) "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the city including, without limitation, damage to persons or property from natural consequences~~;~~ (such as storms~~,~~ and earthquakes), riots or wars.

(~~m~~k) "Expanded basic service" means the tier of optional video programming services, which is the level of cable service received by most subscribers above basic service, and does not include, for example, premium service.

(~~n~~l) "Facilities" means the component parts of the cable system, including but not limited to coaxial cable, fiber optic cable, amplifiers, taps, connectors, power supplies, electronics, towers, antennas, satellite dishes and optronics.

(~~o~~m) "Fiber optic" means a transmission medium of optical fiber cable, along with all associated optronics and equipment, capable of carrying cable service by means of electric light-wave impulses.

(~~p~~n) "Franchise" or "cable franchise" shall mean the initial authorization, or renewal thereof, issued by the franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction and operation of a cable ~~communications~~ system for the purpose of offering cable service~~ or other service~~ to subscribers.

(~~q~~o) "Franchise area" means the area within the jurisdictional boundaries of the city, including any areas annexed or otherwise added to the city during the terms of a franchise.

(~~r~~p) "Franchise fee"~~ means the fee or assessment imposed by the city on the franchisee or subscriber, or both, as provided in Section 622 of the Cable Act. Franchise fees shall not include any tax, fee or assessment of general applicability, capital costs required by a franchise to be incurred by the franchisee for public, educational or governmental access facilities and equipment, or requirements or charges incidental to the awarding or enforcing of the franchise including payments for bonds, insurance, indemnification, penalties or liquidated damages.~~ shall have the same meaning as set forth in the Cable Acts.

(~~s~~q) "Franchisee" means the person~~, firm or corporation~~ to whom or which a franchise is granted by the council under this chapter and the lawful successor,

transferee or assignee of said person~~, firm or corporation~~ subject to such conditions as may be defined by city ordinance.

(~~t~~r) "Gross revenues" means all revenues derived directly or indirectly by a franchisee or its affiliates from the operation of the cable system to provide cable services within the franchise area. Gross revenues shall not include (i) bad debt, provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in gross revenues in the time period collected; or (ii) any taxes on services furnished by the franchisee which are imposed directly on any subscriber by the state, city or other governmental unit and which are collected by the franchisee on behalf of said governmental unit; or (iii) any public, educational or governmental ("PEG") access capital advances or contributions. Franchise fees are not a tax and are included in gross revenues. ~~any and all receipts and revenues derived directly or indirectly from all sources related to the operation of the cable communications system in the franchise area, other than transactions related to real property receipts by a franchisee and not including any taxes on services furnished by a franchisee, imposed on any subscriber or user by any governmental unit, agency or instrumentality and collected by a franchisee for such entity; provided also that net uncollectable debts are not considered as revenue in this definition.~~

(~~u~~s) "Head-end" means a franchisee's primary facility for signal reception and dissemination on its cable system, including cables, antennas, wires, satellite dishes, monitors, lasers, switchers, modulators, processors for broadcast signals, and all other related equipment and facilities.

~~(v) "Institutional networks (I-nets)" means a private network designated principally for the provision of non-entertainment services to schools and public agencies separate and distinct from the cable communications system.~~

~~(w) "Node" means that portion of the cable system where fiber optic cables and coaxial cables meet. The node consists of an enclosure housing optronics and electronics that convert light into radio frequency ("RF") signals and RF signals into light necessary for the delivery of bi-directional cable services to subscribers over a hybrid fiber-coaxial cable ("HFC") cable system.~~

(~~x~~t) "Premium service" means programming choices (such as movie channels~~,~~ and pay-per-view programs~~, or video on demand~~) offered to subscribers on a per-channel, per-program or per-event basis.

~~(y) "Public, education and government (PEG) access channels" means channel capacity designated for public, educational, government use.~~

~~(z) "Rights-of-way" includes the surface of and space above and below any real property in the city in which the city has a regulatory interest, or interest as a trustee for the public, as they now or hereafter exist, including, but not limited to, all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the city, and any unrestricted public or utility easements established, dedicated, platted, improved or devoted for public utility purposes; provided, however, this shall not include public parks for which a separate authorization and agreement to utilize any part of same shall be required from the city.~~

(~~aa~~u) "Subscriber" means a person or entity or user of the cable ~~communications~~ system who lawfully receives cable services~~ or other service~~ therefrom with franchisee's express permission.

(~~bb~~v) "Tier" means a group of channels for which a~~ single~~ periodic subscription fee is charged.

(~~cc~~w) "Upstream" means carrying a transmission to the head-end from remote points on the cable system or from interconnection points on the cable system.

26.20.020 Terms of franchise.

(a) Authority to Grant Franchises for Cable~~ Communications~~ Systems. It is unlawful to engage in or commence construction, operation, or maintenance of a cable~~ communications~~ system without a franchise issued under this chapter. The city council may, by ordinance, award a nonexclusive franchise to construct, operate and maintain a cable~~ communications~~ system, which complies with the terms and conditions of this chapter.

Any franchise granted pursuant to this chapter shall be nonexclusive and shall not preclude the city from granting other or further franchises or permits or preclude the city from using any rights-of-way or other public properties or affect its jurisdiction over them or any part of them, or limit the full power of the city to make such changes, as the city shall deem necessary, including the dedication, establishment, maintenance, and improvement of all new rights-of-way and thoroughfares and other public properties. However, any such changes shall not materially or substantially impair the rights granted a franchisee pursuant to this chapter. All franchises granted subsequent to the effective date of the ordinance codified in this chapter shall be granted consistent with the terms and conditions of this chapter.

(b) Incorporation by Reference. The provisions of this chapter shall be incorporated by reference in any franchise ordinances approved hereunder. However, in the event of any conflict between this chapter and the franchise, the franchise shall be the prevailing document.

(c) Nature and Extent of the Franchise. Any franchise granted hereunder by the city shall authorize a franchisee, subject to the provisions herein contained:

(1) To engage in the business of operating and providing cable service~~ and other services~~ and the distribution and sale of such service to subscribers within the city; and

(2) To erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any right-of-way, such amplifiers and appliances, lines, cables, fiber, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appurtenant to the cable~~ communications~~ system; and, in addition, so to use, operate and provide similar facilities, or properties rented or leased from other persons~~, firms or corporations~~, including but not limited to any public utility or other franchisee franchised or permitted to do business in the city. No privilege or exemption shall be granted or conferred upon a franchisee by any franchise except those specifically prescribed therein, and any use of any street shall be

consistent with any prior lawful occupancy of the street or any subsequent improvement or installation therein.

(d) Term of the Franchise. Unless otherwise specified in a cable franchise, a franchise shall be valid for a term of not more than ten years; provided, that the city may grant a cable franchise that contains a base term with performance standards, which, if met, would extend the term of the cable franchise for a defined period of time.

26.20.030 Application.

An applicant for a franchise to construct, operate, and maintain a cable ~~communications~~ system within the city shall file an application in a form prescribed by the city, accompanied by a nonrefundable filing fee in the amount determined by the city.

26.20.040 Franchise fee.

A franchisee shall pay to the city quarterly, a sum equal to five percent or greater of gross revenues, as defined in this chapter for the preceding three calendar months.

26.20.050 Franchise issuance.

Prior to the granting of a<u>n initial</u> franchise, the city council shall conduct a public hearing to determine the following:

(a) Initial Franchise.

(1) That the public will be benefited by the granting of a franchise to the applicant;

(2) That the applicant has <u>the</u> requisite financial and technical resources and capabilities to build, operate and maintain a cable ~~communications~~ system in the <u>franchise</u> area;

(3) That the applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the city;

(4) That the applicant will comply with all terms and conditions placed upon a franchisee by this chapter;

(5) That the applicant is capable of complying with all relevant federal, state, and local regulations pertaining to the construction, operation and maintenance of the facilities and systems incorporated in its application for a franchise;

(6) That there is sufficient capacity in the public rights-of-way to accommodate the cable ~~communications~~ system;

(7) That the present and future use of the public rights-of-way will be compatible and consistent with the use by the cable ~~communications~~ system;

(8) The potential disruption to existing users of the public rights-of-way to be used by the cable ~~communications~~ system and the resultant inconvenience which may occur to the public; and

(9) Any other conditions that the city may deem appropriate.

(b) Renewal Franchise ~~Federal Requirements~~. <u>Renewals of franchises shall be governed by the Cable Acts.</u>

~~(1) A franchisee has substantially complied with the material terms of the existing franchise and with applicable law;~~
~~(2) The quality of a franchisee's service has been reasonable in light of community needs;~~
~~(3) A franchisee has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in a franchisee's proposal;~~
~~(4) A franchisee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.~~

26.20.060 Police power.

In accepting any franchise, a franchisee acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the city to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the city pursuant to such power.

26.20.070 ~~Rules and r~~Regulations ~~by the city~~.

(a) In addition to the inherent powers of the city to regulate and control any franchise it issues, the authority granted to it by the Cable Acts, and those powers expressly reserved by the city, or agreed to and provided for in a franchise, the right and power is hereby reserved by the city to promulgate such additional regulations as it may find necessary in the exercise of its lawful police powers.

(b) The city council reserves the right to delegate its authority for franchise administration to a designated agent.

26.20.075 Interference.

No cable operator may locate or maintain its cable facilities so as to unreasonably interfere with the use of the rights-of-way by the city, by the general public or other persons authorized to use or be present in or upon the rights-of-way. A franchisee shall have thirty days to perform any requested "make ready" work or alterations to their cable facilities upon request by persons authorized to use or be present in or upon the rights-of-way. If a franchisee fails to perform such work within thirty days, then the authorized persons may perform such "make ready" work or alterations at their own cost.

26.20.080 Technical standards.

(a) ~~Subject to federal, state and local law, a~~A franchisee shall comply with FCC technical standards, rules and regulations, ~~Part 76, Subpart K, Section 76.601 through 76.610~~ as amended, ~~hereafter,~~ and, at ~~the~~ a minimum, also the following:

(1) Applicable city, county, state and national/federal codes and ordinances;

(2) Applicable utility joint attachment practices;

(3) Safety codes, rules and regulations including t~~T~~he National Electric Safety Code and the National Electrical Code; and

~~(4) City public works policies and standards;~~
(~~5~~4) Local rights-of-way procedures~~; and~~
~~(6) Bell System Code of Pole Line Construction~~.
(b) A comprehensive routine ~~preventive~~ preventative maintenance program shall be developed, effected, and sustained to ensure adequate operating standards in conformance with FCC ~~R~~regulations ~~Part 76 or as may be amended~~.
(c) Subject to federal, state and local law, the city may impose more stringent technical standards on~~,~~ a franchisee as deemed necessary by the city.
(d) Cable facilities shall comply with the most recent standards in the utility policy and other public works policies and standards and applicable city codes including, but not limited to, Title 19, Streets and Sidewalks, as it now exists or is hereafter amended.

26.20.090 Parental control device~~s~~.
~~In accordance with the Cable Act, a~~A franchisee will make available ~~at the cost specified by the FCC~~ a device by which a subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

~~26.20.100 Conditions of grant of cable franchise and construction standards.~~
~~All Franchisees shall comply with the provisions of Chapter 26.24 of this code entitled "Conditions of Grant of License, Franchise or Cable Franchise," and the provisions of Chapter 26.28 of this code entitled "Construction."~~

26.20.100 Coordination of construction activities.
All cable operators are required to cooperate with the city, with each other and other grantees as follows:
(1) Each cable operator shall meet with the city, other grantees and users of the rights-of-way annually or as determined by the city to schedule and coordinate construction.
(2) All construction locations, activities and schedules shall be coordinated, as ordered by the public works director, to minimize public inconvenience, disruption or damages.

26.20.105 Damage to property.
No cable operator or any person acting on a cable operator's behalf shall take any action or allow any action to be done which may impair or damage any rights-of-way, or other property located in, on or adjacent thereto and shall provide restoration in accordance with Section 26.20.265 of this chapter.

26.20.110 Undergrounding.

In those areas and portions of the city where the transmission or distribution facilities of the public utility providing telephone service and those of the facility providing electric service are underground or hereafter may be placed underground, then a franchisee shall likewise construct, operate and maintain all of its transmission and distribution facilities in the same area underground upon city approval. Such activities shall be made in concurrence and cooperation with the other affected utilities. Amplifiers and associated equipment in a franchisee's transmission and distribution lines may be in appropriate housing upon the surface of the ground.

26.20.120 Emergency override.

At a minimum, a franchisee shall be in compliance with federal laws and FCC ~~R~~regulations and rules requiring installation and maintenance of an Emergency Alert System (EAS)~~ and provide an audio interrupt on all channels and video message on at least one channel during an emergency. In addition, a franchisee shall provide text banner messages on the video portion of all of all television signals so that the city may provide emergency warning messages and emergency services public information to city residents~~.

26.20.130 Rates.

~~Within thirty days after the grant of any franchise hereunder~~Upon written request by the city, a franchisee shall ~~file with the city~~ submit a complete schedule of all present rates charged to all subscribers.

Prior to implementation of any change in rates or charges for any service or equipment provided by a franchisee, a franchisee shall provide the city a minimum of thirty days and all subscribers a minimum of thirty days prior written notice of such change. Notwithstanding any provision to the contrary, a franchisee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any federal agency, state, or the city on the transaction between the cable operator and the customer.

Subject to the Cable Acts and resultant FCC regulations, the city may regulate the rates or charges for providing cable service and other equipment and will establish rate regulation review procedures as~~ delegated~~ allowed by federal law. The city will monitor~~ those other~~ rates within the benchmarks provided by the FCC.

26.20.140 Cable availability.

Cable service shall not be denied to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides.

26.20.150 Customer service.

~~A franchisee shall at all times be in compliance with FCC Customer Service Standards 76.309, Subpart II as may be amended, which standards are incorporated into this chapter by reference ("FCC Customer Service Standards"). In addition, a franchisee shall comply with the following standards:~~

~~(a) Telephone Response. A franchisee shall maintain an adequate force of customer service representatives as well as incoming trunk lines so that telephone inquiries are met promptly and responsively. A franchisee shall have in place procedures for utilization of other manpower and/or recording devices for handling the flow of telephone calls at peak periods of large outages or other major causes of subscriber concern. A copy of such procedures and/or policies shall be made available to the city.~~

~~In order that the city may be informed of a franchisee's success in achieving satisfactory customer service in its telephone answering functions, the franchisee shall, within thirty days of the end of each calendar month, provide a summary report of calls handled at their customer sales and service center facility taking calls from city customers. This report will provide the following:~~

~~(1) Percentage of calls answered within thirty seconds;~~

~~(2) Number of calls received;~~

~~(3) Average handle time;~~

~~(4) Number of calls abandoned by the caller;~~

~~(5) Average speed of answer; and~~

~~(6) Percentage of time all lines are busy.~~

~~This data will be compared to minimum customer service standards of the FCC or the city in effect at the time.~~

~~(b) Additional Regulations. The city reserves the right to enact and enforce any customer protection law or regulation containing more stringent standards, to the extent nonspecifically preempted by applicable law.~~

~~(c) Failure to Improve Customer Service. In the event the franchisee fails to meet the minimum customer service standards, the city or its designee may review telephone response and customer service information with the franchisee and discuss how to improve the franchisee's performance. It is assumed that improvements will be made by a franchisee in any areas of noncompliance from the last reporting period. Failure to do so may result in imposition of penalties in accordance with Section 26.20.250 of this chapter or further enforcement action. In addition, the city council may call a public hearing for the purpose of examining the reasons, if any, why the Franchisee has not complied with the minimum customer service standards. The city may make a transcript of any such hearings part of an exhibit under Section 626(c)(1)(A) and (B) of the Cable Act alleging that such practices have failed to conform to renewal requirements as stated therein.~~

~~(d) Refunds for Service Interruptions. Upon request by the subscriber, no charge for the period of an outage shall be made to any subscriber if the subscriber was without service for a period exceeding twelve hours.~~

~~(e) Service Logs. A log of all service interruptions shall be maintained and kept on file by a franchisee. The city, during normal business hours and after forty-eight hours' notice, may inspect such logs.~~

26.20.150 Customer service.

(a) Policy. The cable operator shall be permitted to resolve citizen complaints prior to action or involvement by the city. If a complaint is not resolved by the cable operator to the citizen's satisfaction, the city may intervene.

These standards are intended to be of general application; however, the cable operator shall be relieved of any obligations hereunder if it is unable to perform due to circumstances beyond its reasonable control, such as natural disasters. The cable operator may, and is encouraged, to exceed these standards for the benefit of its customers and such shall be considered performance for the purpose of these standards.

(b) Definitions. When used in this Section, the following words, phrases, and terms shall have the meanings given below.

(1) "Complaint" shall mean an initial or repeated customer expression of dissatisfaction, whether written or oral, or other matter that is referred beyond a customer service representative or to the city for resolution. This does not include routine inquiries and service requests.

(2) "Customer" shall mean any person who lawfully receives or will receive cable service from the cable operator.

(3) "Customer service representative" or "CSR" shall mean any person employed by the cable operator to assist, or provide service to customers, whether by answering telephone lines, answering customers' questions, or performing other customer service related tasks.

(4) "Normal business hours" shall mean those hours during which most similar businesses in the city are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

(5) "Normal operating conditions" shall mean those service conditions that are within the control of the cable operator. Those conditions that are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions that are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(6) "Service interruption" shall mean the loss of picture or sound on one or more cable channels.

(c) Accessibility. The cable operator shall maintain at least one (1) customer service center or a bill payment location on the Eastside. Service shall be available at least nine (9) consecutive hours Monday through Friday, and at least four consecutive hours on Saturdays, ending no earlier than 1:00 p.m. The customer service center or bill payment location must be accessible to all persons, including the elderly and persons with disabilities. Parking must be provided in a

manner consistent with the Kirkland Municipal Code. The following services shall be available at the customer service center: the opportunity to pick up, exchange and return certain types of equipment, depending upon the size of the equipment; bill payment; and response to other customer inquiries and requests. Customers may pay cable bills at the bill payment location. The cable operator shall post a sign at the service center/bill payment location advising customers of its hours of operation.

The cable operator shall maintain a toll free telephone number that shall be available 24 hours a day, seven days a week for service/repair requests and billing inquiries. The cable operator shall have dispatchers and technicians on call 24 hours a day, 7 days a week, including legal holidays.

The cable operator shall maintain an internet web presence. Except for normal and regularly scheduled maintenance, the web site shall be available twenty-four hours and seven days a week under normal operating conditions. The following services shall be available on the website: the ability to sign up for and/or disconnect service; and receive responses to other customer inquiries and requests.

Qualified and trained customer service representatives will be available to respond to customer telephone and email inquiries during normal business hours.

(d) Responsiveness. The cable operator shall complete all standard residential installations requested by customers within seven (7) business days after the order is placed, under normal operating conditions ninety-five percent (95%) of the time measured on a quarterly basis, unless the customer requests a later date for installation. "Standard" residential installations are those located within one hundred twenty-five (125) feet from the existing distribution system. If a customer requests a nonstandard residential installation, or the cable operator determines that a nonstandard residential installation is required, the cable operator shall provide the customer in advance with a cost estimate and an estimated date of completion.

Absent unusual circumstances, all underground cable drops from the curb to the home shall be buried at a depth of no less than twelve inches (12"), and within a reasonable period of time from the initial installation, or at a time mutually agreed upon between the cable operator and the customer. In all instances, the cable operator must comply with the State's One Call requirements.

(e) Service Appointments. Customers requesting installation of cable service or service to an existing installation may choose an appointment window consisting of a four hour time block between 8:00 a.m. and 6:00 p.m. or another block of time mutually agreed upon by the customer and the cable operator. These options shall be clearly explained to the customer at the time of scheduling. The cable operator may not cancel an appointment with a customer after 5:00 p.m. on the day before the scheduled appointment, except for appointments scheduled within twelve (12) hours after the initial call.

If the cable operator's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled as necessary at

a time that is convenient for the customer. If the customer is absent when the technician arrives, the technician shall leave written notification of timely arrival.

(f) Outages and Service Interruptions. In the event of a system outage (loss of reception on all channels) resulting from cable operator equipment failure affecting three (3) or more customers, the cable operator shall respond in accordance with its outage response procedures, and in no event more than two (2) hours after the third customer call is received and shall remedy the problem as quickly as possible.

Under normal operating conditions, the cable operator shall use its best efforts to correct service interruptions resulting from cable operator equipment failure by the end of the next day, but in no event longer than forty-eight (48) hours.

The cable operator shall notify the city if a planned service interruption is going to affect fifty (50) or more customers for a time period greater than two (2) hours. The cable operator shall keep an accurate and comprehensive file of any and all complaints regarding the cable system or its operation of the cable system, in a manner consistent with the privacy rights of customers, and the cable operator's actions in response to those complaints. The cable operator shall provide the city an executive summary upon request that shall include information concerning complaints

(g) Signal Quality. The cable service signal quality provided by the cable operator shall meet or exceed technical standards established by the FCC. The cable operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice to the customers and shall occur during periods of minimum use of the cable system, preferably between midnight and 6:00 a.m.

If a customer experiences poor signal quality (whether it relates to a visual or audio problem) which is attributable to the cable operator's equipment, the cable operator shall respond and repair the problem no later than the day following the customer call; provided that the customer is available and the repair can be made within the allotted time. At the customer's request, the cable operator shall repair the problem at a later time that is convenient for the customer.

(h) Problem Resolution. A customer service representative shall have the authority to provide credits, waive fees, schedule service appointments and change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the customer within twenty-four (24) hours and attempt to resolve the problem within forty-eight (48) hours or within such other timeframe as is acceptable to the customer and the cable operator.

(i) Billing. The first billing statement after a new installation or service change will be prorated as appropriate and will reflect any deposit. Bills must be clear, concise and understandable. Bills must be fully itemized, including, but not limited to, each category of service and equipment provided to the customer and must state clearly the charges therefor. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In case

of a billing dispute, the cable operator must respond to a written inquiry from a customer within thirty (30) days.

A customer may terminate or downgrade service at any time. The cable operator will disconnect or downgrade any cable service for a customer who so requests within seven (7) business days. No period of notice before voluntary termination or downgrade of service may be required of customers by the cable operator, and the customer shall not be required to pay for the time which elapses from notification to actual disconnection. There will be no charge for disconnection, and any downgrade charges will conform to applicable law.

A cable operator may immediately disconnect a customer's service if:

(1) the customer is damaging, destroying, or unlawfully tampering with or has damaged or destroyed or unlawfully tampered with the cable operator's cable system or equipment;

(2) the customer is not authorized to receive a service and is receiving it and/or is facilitating, aiding or abetting the unauthorized receipt of service by others; or

(3) customer-installed or attached equipment is resulting in signal leakage that is in violation of FCC rules.

After disconnection, the cable operator will restore service after the customer provides adequate assurance that it has ceased the practices that led to disconnection, and paid all proper fees, expenses and charges owed the cable operator.

A late fee or administrative fee may not be imposed for payments earlier than thirty (30) days after the due date specified in the bill unless allowed by law. The cable operator must provide customers the ability to remit payment by mail or in person at the service center or bill payment location. Customers may not be charged a fee for any failure of the cable operator, including, for example, failure to timely or correctly bill the customer.

(j) Notice/Work. Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, the cable operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed. In the case of an emergency, however, the cable operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Nothing herein shall be construed as authorizing access or entry to private property. Any work on private property shall be conducted in accordance with an agreement between the cable operator and the property owner. If damage is caused by any cable operator activity, the cable operator shall reimburse the property owner one hundred percent (100%) of the cost of the damage or replace or repair the damaged property to as good a condition as before the cable operator's activity commenced. Affected property owners shall be notified in advance of major construction or installation projects in adjacent rights-of-way.

(k) Services for Customers with Disabilities. For any customer with a disability, the cable operator shall at no charge deliver and pick up converters and other cable operator equipment at the customer's home. In the case of a malfunctioning converter or such other equipment, the technician shall provide

another converter or such other equipment, hook it up and ensure that it is working properly, and shall return the defective converter or such other equipment to the cable operator.

The cable operator shall provide TDD/TTY service with trained operators, who can provide every type of assistance rendered by the customer service representatives, for any hearing-impaired customer at no charge.

The cable operator shall provide free use of a remote control unit to mobility-impaired customers. Any customer with such a disability may request the remote control unit by providing the cable operator with a letter from the customer's physician stating the need, or by making the request to the cable operator's installer or service technician, where the need for the special service can be visually confirmed.

(l) Customer Information. The cable operator shall provide its customers with a written service agreement and a customer installation packet for use in establishing cable service. The cable operator shall provide the following information at the time of installation and make it continuously available via its internet presence or send it annually via paper mail to each customer.

(1) Products and services offered by the cable operator, including channel positions of programming carried on the system;

(2) The prices for those services (including discounts offered) and conditions of subscription to programming and other services;

(3) Installation and service maintenance policies;

(4) Instruction on the use of cable service;

(5) The cable operator's billing, collection, disconnection and reconnection procedures and late charge procedures;

(6) Customer privacy requirements;

(7) All applicable complaint procedures, the cable operator's website address, and the telephone number and mailing address of the cable operator; and the contact information for the city (which contact information for the city shall be distinctly identified and clearly distinguished from the information regarding the cable operator);

(8) Use and availability of parental control/lock out devices and the cost, if any, for the use of such devices;

(9) Special services or equipment available for customers with disabilities and explanations for how to obtain and use them; and

(10) Days, times of operation, and location of the customer service location and bill payment center.

Customers will be notified of any changes in rates, programming services or channel positions thirty (30) days in advance of such change(s) if the change is within the control of the cable operator.

In addition to the requirements regarding advance notification to customers of any changes in rates, programming services or channel positions, the cable operator shall give thirty (30) days written notice to the city before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the

addition or deletion of channels, each channel added or deleted must be separately identified. The cable operator shall provide written notice to a customer of any increase in the price to be charged for equipment associated with the basic service tier at least thirty (30) days before any proposed increase is effective. The notice shall include the address of the city. To the extent the cable operator is required to provide notice of service and rate changes to customers, the cable operator may provide such notice using any reasonable written means at its sole discretion.

All officers, agents, and employees of the cable operator or its contractors or subcontractors who are in personal contact with customers shall wear on their outer clothing identification cards bearing their name and photograph. The cable operator shall account for all identification cards at all times. Every vehicle of the cable operator shall be visually identified to the public as working for the cable operator. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor or subcontractor, and shall be further identified as contracting or subcontracting for the cable operator. There must be a listed telephone number for the names displayed. The telephone number listed and posted must be a local or toll free number. The phone number must connect to persons trained to receive and respond to calls regarding employees, construction and related problems (including repair problems). All CSRs shall identify themselves to callers immediately following the greeting during each telephone contact with the public.

Each CSR, technician or employee of the cable operator in each contact with a customer shall state the estimated cost of the service, repair, or installation prior to delivery of the service or before any work is performed, and shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work is to be performed.

The cable operator must take appropriate steps to ensure that all written cable operator promotional materials, announcements and advertising of cable service to customers and the general public, where price information is listed in any manner, clearly and accurately discloses price terms. In the case of telephone orders, the cable operator will take appropriate steps to ensure that prices and terms are clearly and accurately disclosed to potential customers in advance of taking the order.

The cable operator will maintain a file in its regional office that is available for public inspection during normal business hours containing all information required under FCC regulations.

(m) Customer Privacy. The cable operator shall not monitor cable television signals to determine the individual viewing patterns or practices of any customer without prior written consent from that customer, except as needed to maintain system integrity or for other lawful purposes.

The cable operator shall not sell or otherwise make available customer lists or other personally identifiable information without prior written customer consent except as otherwise permitted by law. The cable operator is permitted to disclose such information if such disclosure is necessary to render or conduct a legitimate

business activity related to a cable service provided by the cable operator to its customers.

A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such cable operator. A cable subscriber shall be provided reasonable opportunity to correct any error in such information.

(n) Safety. The cable operator shall install and locate its facilities, cable system, and equipment in compliance with all federal, state and local laws and regulations, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever the cable operator receives notice that an unsafe condition exists with respect to its equipment, the cable operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.

(o) Complaints to the Cable Operator. The cable operator shall establish written procedures for receiving, acting upon, and resolving complaints without intervention by the city (except where necessary) and shall publicize such procedures clearly on its internet web page. Said written procedures shall describe a simple process by which any customer may submit a complaint by telephone, via the internet, or in writing to the cable operator regarding a disputed matter, or an alleged violation of: (i) any provision of these standards; (ii) any terms or conditions of the customer's contract with the cable operator; or (iii) reasonable business practices.

Within fifteen (15) days after receiving a complaint, the cable operator shall notify the customer of the results of its investigation and its proposed action or credit. The cable operator shall also notify the customer of the customer's right to file a complaint with the city in the event the customer is dissatisfied with the cable operator's decision, and shall explain the necessary procedures for filing such complaint with the city. The cable operator's complaint procedures shall be filed with the city.

(p) Verification of Compliance. The cable operator shall document its compliance with these standards as requested by the city.

(q) Noncompliance with Standards. The cable operator's noncompliance with any provision of these standards may be deemed by the city as a franchise violation.

(r) Procedure for Remedying Violations. If the city has reason to believe that the cable operator has failed to comply with any of these standards, or has failed to perform in a timely manner, or if similar complaints repetitively arise, the city may require in writing that the cable operator remedy the alleged noncompliance. If the alleged noncompliance is denied or not remedied to the satisfaction of the city, the city may opt to follow the liquidated damages procedures, revocation procedures or seek other remedies set forth in the franchise, or pursue any other remedies at law or in equity.

(s) Customer Contract. The cable operator shall not enter into a contract with any customer that is in any way inconsistent with the terms of these customer service standards or the cable operator's franchise with the city.

26.20.160 Emergency power

In the event of a power failure, a franchisee shall provide standby power generating capacity at the head-end and its hubs, capable of providing at least four hours of emergency operation. The franchisee shall also maintain standby power supply systems, rated for at least two hours' duration, throughout all of the trunk and distribution networks.

26.20.170 System evaluation.

In addition to periodic meetings, the city may require reasonable routine system evaluation sessions at any time during the term of a franchise, but not to exceed one evaluation per year. The city shall provide franchisee thirty (30) days prior written notice of a system evaluation. ~~However~~ Notwithstanding the foregoing, in the case of ~~reoccurring~~ recurring problems, the city may conduct as many evaluations as are necessary.

To assist in the preliminary evaluation, the city may enlist an independent consultant to conduct an analysis of the cable ~~communications~~ system and its performance and to submit a report of such analysis to the city. ~~It is intended that such evaluations cover areas such as customer service, response to the community's cable-related needs, and a franchisee's performance under and compliance with the terms of a franchise.~~

During an evaluation session, a franchisee shall fully cooperate with the city and shall provide within a reasonable time without cost such reasonable information and documents as the city may request to perform evaluations.

If, as a result of the evaluation session, or at any other time, the city determines that reasonable evidence exists of inadequate cable ~~communications~~ system performance, it may require a more detailed technical evaluation and analyses directed toward such suspected inadequacies. The report prepared by the consultant shall include at least:

(a) A description of the technical problems in cable ~~communications~~ system performance which precipitated the special tests;

(b) A description of what cable ~~communications~~ system components were tested;

(c) A description of the equipment used and the procedures employed in testing;

(d) The method, if any, by which such cable ~~communications~~ system performance problem was resolved;

(e) Any other information pertinent to said tests and analyses, which may be required by the city, or determined when the tests are performed.

If the tests indicate that the cable ~~communications~~ system is not in compliance with FCC standards or the requirements of the franchise, a franchisee shall reimburse the city for any costs involved in conducting such tests, as well as associated consultant fees and other expenses. Such fees or

expenses shall not exceed $~~2,500~~15,000 for each evaluation. A franchisee shall have an opportunity to refute any findings which illustrate noncompliance, and if franchisee is found to be in compliance, then the city shall pay for the evaluation.

26.20.180 Periodic meetings.

Upon request, a franchisee shall meet with designated city officials and/or designated representative(s) to review the performance of a franchisee. The franchisee shall designate an officer or employee who is knowledgeable about the cable~~ communications~~ system and has decision-making authority with regard to the areas of concern identified by the city. The subjects may include, but are not limited to, customer service, technical issues or problems, franchise compliance and other areas of concern to the city regarding those items covered in the periodic reports and performance tests.

26.20.190 Record inspection.

The city may inspect the records of a franchisee relating to the operation of the cable~~ communications~~ system in the franchise area during normal business hours. The city shall maintain the confidentiality of any trade secrets or other proprietary or confidential information in the possession of a franchisee. Such documents~~ shall~~ may include, but~~ is~~ are not limited to, such information as financial records, subscriber records, and appropriate information and plans pertaining to a franchisee's operation in the city~~ to the extent allowed by law~~.

26.20.200 Annual reports.

A franchisee shall furnish an annual report of its activities as appropriate within ~~one hundred twenty~~ ninety days of the end of its~~ fiscal~~ calendar year. Such report shall include:

(a) The m~~M~~ost recent annual report;

(b) A copy of the 10-K Report, if required by the Securities and Exchange Commission;

(c) The number of homes passed;

(d) The number of subscribers with basic service;

(e) The number of subscribers with expanded basic service;

(~~e~~f) The number of subscribers with premium services;

(~~f~~g) The number of ~~hook-ups~~ installations in the period;

(~~g~~h) The number of disconnects in the period;

(~~h~~i) Total number of miles of cable in the city;

(~~i~~j) A s~~S~~ummary of escalated or repeated complaints received by category, length of time taken to resolve and action taken to provide resolution;

(~~j~~k) A statement of its current billing practices and a sample copy of the bill format;

(~~k~~l) A current copy of its subscriber service contract; and

(~~l~~m) Such other reports as the city deems necessary.

26.20.205 Facilities maps.

Each cable operator shall provide the city with an accurate route map or maps certifying the location of all cable facilities within the rights-of-way. Each cable operator shall provide updated route maps upon written request.

26.20.210 Programming.

Upon request, a~~A~~ franchisee shall file with the city a listing of its programming and the tiers in which they are placed. Subject to federal law a franchisee shall be responsive to the city's suggestions of general program categories such as, sports, weather, news, educational, music, comedy, family or others that may be found to be of interest to the citizens of the city of Kirkland as determined from time to time in residential questionnaire polls. The results of any surveys will be appended to the respective franchise ordinances if appropriate.

26.20.220 Nondiscrimination.

In connection with rates, charges, facilities, rules, regulations and in all of franchisee's services, programs or activities, and all of franchisee's hiring and employment made possible by or resulting from this franchise, there shall be no discrimination by the franchisee or by franchisee's employees, agents, contractors, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, creed, national origin, sexual orientation, marital status or the presence of any disability, including sensory, mental or physical handicaps~~,~~ (unless based upon a bona fide occupational qualification)~~ in relationship to hiring and employment~~. This requirement shall include, but not be limited to the following practices: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The franchisee shall not violate any applicable federal, state or local law or regulation regarding nondiscrimination.

Any material violation of this provision~~ shall~~ may be grounds for termination of a franchise by the city and, in the case of the franchisee's breach, may result in ineligibility for further city agreements; provided, that nothing in this chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any subscriber coming within such classification would be entitled; and provided further, that connection and/or service charges may be waived or modified during promotional campaigns of a franchisee.~~ The franchisee will not deny access to cable service to any group of potential residential subscribers because of the income of the residents of the local area in which the group resides.~~

26.20.230 Continuity of service.

A franchisee shall continue to provide service to all subscribers so long as their financial and other obligations to a franchisee are fulfilled.

(a) In this regard a franchisee shall act so far as it is within its control to ensure that all subscribers receive continuous uninterrupted service during the term of the franchise.

(b) In the event a franchisee fails to operate a cable~~ communication~~ system for seventy-two continuous and consecutive hours without prior notification to

and approval of the city ~~council~~ or without just cause such as an impossibility to operate the cable ~~communication~~ system because of the occurrence of an act of God or other circumstances reasonably beyond a franchisee's control, the city may, after notice and an opportunity for a franchisee to commence operations, at ~~its~~ the city's option, operate the cable ~~communication~~ system or designate someone to operate the cable ~~communication~~ system until such time as a franchisee restores service to conditions acceptable to the city council or a replacement franchisee is selected. If the city is required to fulfill this obligation for a franchisee, a franchisee shall reimburse the city for all reasonable costs or damages in excess of revenues from the system received by the city that are the result of a franchisee's failure to perform.

26.20.235 Construction permits.

No person shall construct or install any cable facilities within the city without first obtaining a construction permit therefore, provided, however:

(1) No permit shall be issued for the construction or installation of cable facilities in the rights-of-way unless the cable operator has applied for and received a franchise pursuant to this title.

(2) No permit shall be issued for the construction or installation of cable facilities without payment of all fees pursuant to this title.

(3) No permit shall be issued to cut any public way, the surface of which is less than five years old, unless the cable operator overlays the surface of any public way which is cut by the cable operator.

~~**26.20.240 Transfer of ownership.**~~

~~Any franchise awarded by the city shall be based upon an evaluation by the city of each application, the qualifications, and other criteria as such pertain to each particular applicant. A franchise shall not be sold, transferred, leased, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, unless approval is granted by the city council. The city shall not unreasonably withhold its approval. The city shall provide written notice of its approval or disapproval of assignment within sixty days of receiving written notice of the franchisee's intent to assign the franchise.~~

~~A transfer of control of a franchise shall be deemed to occur if there is an actual change in control or where ownership of fifty percent or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.~~

~~A franchisee shall promptly notify the city prior to any proposed change in, or transfer of, or acquisition by any other party of control of a franchisee's company. Every change, transfer, or acquisition of control of a franchisee's company shall cause a review of the proposed transfer. In the event that the city adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the city may cancel the franchise.~~

~~Approval shall not be required for mortgaging purposes or if said transfer is from a franchisee to another person or entity controlling, controlled by, or under common control with the franchisee. Further the city will monitor the limitations or ownership, control, utilization and restrictions on sale of systems in accordance with the Cable Act.~~

26.20.240 Permit Applications.

Applications for permits to construct cable facilities shall be submitted upon forms provided by the city. The applicant shall pay all associated fees and shall include any additional information as requested by the public works director. The application shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

(1) That the facilities will be constructed in accordance with all applicable codes, rules and regulations.

(2) The location and route of all facilities to be installed on existing utility poles.

(3) The location and route of all facilities to be located under the surface of the ground, including line and grade proposed for the burial at all points along the route which are within the rights-of-way.

(4) To the extent such information is made accessible to the cable operator, the location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the rights-of-way along the route proposed by the cable operator.

(5) The location of all other facilities to be constructed within the city on city property, but not within the rights-of-way.

(6) The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the rights-of-way.

(7) Any landscape plan that may be required by city code for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

26.20.245 Traffic control plan.

All permit applications that involve work on, in, under, across or along any rights-of-way shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed.

~~26.20.250 Violations, penalties and revocation.~~

~~Any franchise granted by the city may be terminated for failure by a franchisee to comply with the material provisions of this chapter and/or the franchise. In addition to termination, the city may impose lesser sanctions, including but not limited to monetary penalties for violation of this chapter and/or the franchise.~~

~~(a) Procedures. Unless a franchisee requests termination of its franchise, the following procedures shall be followed by the city and the franchisee with respect to violations, penalties and franchise termination:~~

~~(1) The city shall provide the franchisee with a written violation notice, by certified mail, detailing the violation and the time period within which the violation must be cured (referred to in this section as the "violation notice"). Within thirty days thereafter, the franchisee shall respond in writing, by certified mail, demonstrating that no violation occurred or that the violation has been corrected.~~

~~(2) The franchisee may, in writing, by certified mail, request an extension of time to cure an alleged violation with an explanation of why the franchisee believes an extension is necessary. The amount of additional time, if any, shall be determined by the city.~~

~~(3) If the franchisee's response to the violation notice is not satisfactory to the city, the city may declare the franchisee to be in default, with written notice, by certified mail, to the franchisee (referred to in this section as the "default notice"). Within ten business days thereafter, the franchisee may deliver to the city, in writing, by certified mail, a request for a hearing before the city council. If no such request is received, the city may declare the franchise terminated for cause or impose lesser sanctions.~~

~~(4) If the franchisee files a timely written request for a hearing, such hearing shall be held within forty-five days after the city's receipt of the hearing request. The hearing shall be open to the public and the franchisee, the city and other interested parties may offer written or oral evidence relevant to the alleged violation and suitable penalties for alleged violations. In addition, the franchisee may offer evidence explaining or mitigating the alleged violation. Within thirty days after the hearing, the city council, on the basis of the record, shall make the determination as to whether there is a violation, whether there is cause for termination, whether the franchise will be terminated or whether lesser sanctions shall be imposed. The city council may, in its discretion, fix an additional time period for the franchisee to cure violations. If the violation has not been cured at the expiration of any additional time period or if the city council does not grant any additional time period, the city council, may, by ordinance, declare the franchise to be terminated and forfeited. In the alternative, the city council may impose lesser sanctions.~~

~~(b) In the event that the city determines that there is a violation and imposes monetary penalties on a franchisee, the penalty shall be two hundred dollars per day, per violation, the first time there are violations found pursuant to this section; five hundred dollars per day, per violation, the second time there are violations found pursuant to this section; and one thousand dollars per day, per violation, the third time (or more) there are violations found pursuant to this section. It shall be the responsibility of the franchisee to contact the city for the purpose of demonstrating that a violation has been cured.~~

~~(c) Unless the city council finds that the franchisee has been nonresponsive in correcting a violation or that a violation is flagrant, penalties shall be assessed for each day beyond fifteen days from the violation notice until the violations have been cured. If the franchisee has been nonresponsive or the violation is flagrant, then penalties may be assessed from the violation notice date.~~

~~(d) If payment of any penalty is delinquent by three months or more, the city may: (1) require partial or total forfeiture of the performance bond or other surety posted by the franchisee; (2) terminate the franchise; or (3) commence a civil action in a court of competent jurisdiction to collect the penalty.~~

26.20.250 Emergency removal.

The city retains the right to cut or move any cable facilities located within the rights-of-way as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

26.20.255 Repair and emergency work.

In the event of an unexpected repair or emergency, a cable operator may commence such repair and emergency response work as required under the circumstances; provided the cable operator shall notify the public works director as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

~~**26.20.260 Effect of termination for noncompliance.**~~

~~Subject to state and federal law, if any franchise is terminated by the city by reason of a franchisee's noncompliance, that part of the cable communications system under such franchise located in the streets and public property, shall, at the election of the city, become the property of the city at a cost consistent with the provisions of the Cable Act if it is not acquired by or transferred to a third party in accordance with Section 26.20.240 of this chapter. If the city, or a third party, does not purchase the system within twelve months a franchisee shall, upon order of the city council, remove the system as provided under Section 26.24.080 of this title. The city may at its discretion extend the period of time for the cable communications system to be purchased beyond the initial twelve-month period.~~

26.20.260 Relocation of facilities.

(a) The city may require a cable operator to relocate authorized facilities within the rights-of-way when reasonably necessary for construction, alteration, repair or improvement of the right-of-way for the purpose of public health, welfare and safety.

(b) The city shall notify cable operators as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. In calculating the date by which relocation must be completed, the city shall consult with the affected cable operators and consider the extent of the facilities to be relocated, the cable operators' service requirements, and the construction sequence for the relocation, within the city's overall project construction sequence and constraints, in order to safely complete the relocation. Cable operators shall complete the relocation by the date specified unless the city or a reviewing court establishes a later date for completion, after a showing by a cable operator that

the relocation cannot be completed by the date specified, using its best efforts and meeting safety and service requirements.

(c) The city may require relocation of facilities at the cable operator's expense in the event of an unforeseen emergency that creates an immediate threat to public health, welfare or safety.

26.20.265 Restoration of rights-of-way.

Restoration shall comply with the following:

(1) When a cable operator, or any person acting on its behalf, does any work in or affecting any rights-of-way, it shall, at its own expense, promptly remove any obstructions therefrom and restore such rights-of-way or property to the same condition which existed before the work was undertaken. As used in this section, "promptly" shall mean as required by the city's public works director in the reasonable exercise of the director's discretion.

(2) If weather or other conditions do not allow for the complete restoration required hereunder, the cable operator shall temporarily restore the affected rights-of-way or property. Such temporary restoration shall be at the cable operator's sole expense, and the cable operator shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(3) A cable operator or other person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights-of-way.

26.20.270 Equalization of civic contributions.

In the event the city grants multiple franchises, the city shall require that subsequent franchisees make an equitable contribution to the city comparable to those costs contributed by the original franchisee. These costs may include but are not limited to such features as PEG access and institutional network costs, services to municipal buildings and any other costs that may have been incurred as a result of ~~the~~ an earlier franchise.

26.20.280 Security fund.

Upon request by the City, ~~E~~each franchisee shall establish a permanent security fund with the city by depositing the amount of up to two hundred fifty thousand dollars with the city in cash, ~~an unconditional letter of credit~~ a bond or other instrument acceptable to the city, which fund shall be maintained at the sole expense of franchisee so long as any of franchisee's facilities are located within the rights-of-way. This security fund shall be separate and distinct from any other bond, letter of credit, security or deposit required.

This security fund may be utilized by the city for the following purposes: (1) reimbursement ~~of~~ to the city by reason of a franchisee's failure to pay the city any sums due under the terms of this chapter or a franchise; (2) reimbursement ~~of~~ to the city for reasonable costs and damages borne by the

city to correct franchise violations not corrected by a franchisee after due notice; (3) monetary remedies or damages assessed against a franchisee due to default or violations of a franchise or this chapter; and (4) any other lawful purpose. If a franchisee~~ has been declared to be~~ is in default~~ by the city~~ under ~~Section 26.20.250 of~~ this chapter or a franchise, or if a franchisee fails to pay the city any franchise fees,~~ penalties~~ damages, or monetary sanctions, or if a franchisee fails to perform any of the conditions lawfully imposed by the city, the city may withdraw from the security fund an amount sufficient to compensate the city's costs and damages, with interest at the maximum legal rate under state law, or twelve percent, whichever is greater. Upon such withdrawal, the city shall notify the franchisee in writing, by certified mail of the amount and date thereof. Within thirty days of mailing notice to a franchisee that the city has withdrawn funds from the security fund, a franchisee shall deposit such further bond or sum of money, or other security, as deemed sufficient to meet the requirements of this chapter.

26.20.290 Inconsistency.

If any portion of this chapter should be inconsistent or conflict with any rule or regulation now or hereafter adopted by federal or state laws, then to the extent of the inconsistency or conflict, the rule or regulation of the federal or state law shall control for so long, but only for so long, as such rule, regulation, or law shall remain in effect. The remaining provisions of chapter shall not be affected thereby.

Chapter 26.24
CONDITIONS OF GRANT OF LICENSE~~, FRANCHISE~~ OR ~~CABLE~~ FRANCHISE

Sections:

26.24.010 General ~~duties~~requirements.
26.24.020 Interference ~~with the rights-of-way~~.
26.24.030 Damage to property.
26.24.040 Notice of work.
26.24.050 Repair and emergency work.
26.24.060 Maintenance of facilities.
26.24.070 Relocation ~~or removal~~ of facilities.
26.24.080 Removal of unauthorized facilities.
26.24.090 Failure to relocate.
26.24.100 Emergency removal or relocation of facilities.
26.24.110 Damage to grantee's facilities.
26.24.120 Restoration of rights-of-way.
26.24.130 Facilities maps.
26.24.140 Duty to provide information.
~~26.24.150 Leased capacity.~~
26.24.160 Grantee insurance.

26.24.170 General indemnification.
26.24.180 ~~Performance and financial guarantees~~Forms of security.
26.24.190 Security fund.
26.24.200 Construction and completion bond.
26.24.210 Acts at grantee's expense.
26.24.220 Coordination of construction activities.
26.24.230 *Repealed.*
26.24.240 *Repealed.*
26.24.250 Revocation or termination of grant.
26.24.260 Notice and ~~duty to~~ cure.
26.24.270 Hearing.
26.24.280 Standards for revocation or lesser sanctions.
26.24.290 Non-telecommunications services.

26.24.010 General ~~duties~~ requirements.

(a) All grantees, before commencing any construction in the rights-of-way, shall comply with all requirements of the Kirkland Municipal Code ~~or other ordinances~~ and regulations of the city as they relate to the city's authority to manage, regulate and control public rights of way.

(b) All grantees shall have no ownership rights in rights-of-way, even though they may be granted a license or franchise to construct or operate their facilities.

(c) Notwithstanding anything in Title 26 to the contrary, any reference in this Chapter 26.24 to a grantee, franchise or permit shall apply only to telecommunications providers or carriers and not to cable operators.

26.24.020 Interference ~~with the rights-of-way~~.

No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the rights-of-way by the city, by the general public or other persons authorized to use or be present in or upon the rights-of-way.

26.24.030 Damage to property.

No grantee or any person acting on a grantee's behalf shall take any action or ~~permit~~ allow any action to be done which may impair or damage any rights-of-way, or other property located in, on or adjacent thereto ~~except~~ and shall provide restoration in accordance with Section 26.24.120 of this chapter.

26.24.040 Notice of work.

Unless otherwise provided in a license or franchise agreement, or as agreed by the holder of a state wide grant and the city, no grantee, or any person acting on the grantee's behalf, shall commence any nonemergency work involving undergrounding~~,~~ or excavation ~~or obstructing~~ in or about the rights-of-way, without five working days' advance written notice to the city. ~~Any private property owner whose property will be affected by a grantee's work shall be afforded the same notice.~~

26.24.050 Repair and emergency work.

In the event of an unexpected repair or emergency, a grantee may commence such repair and emergency response work as required under the circumstances; provided the grantee shall notify the public works director as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

26.24.060 Maintenance of facilities.

Each grantee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

26.24.070 Relocation ~~or removal~~ of facilities.

(a) The city may require a grantee to relocate authorized facilities within the right-of-way when reasonably necessary for construction, alteration, repair or improvement of the right-of-way for the purpose of public health, welfare and safety.

(b) The city shall notify grantees as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. In calculating the date by which relocation must be completed, the city shall consult with the affected grantees and consider the extent of the facilities to be relocated, the grantees' services requirements, and the construction sequence for the relocation, within the city's overall project construction sequence and constraints, to safely complete the relocation. Grantees shall complete the relocation by the date specified unless the city or a reviewing court establishes a later date for completion, after showing by a grantee that the relocation cannot be completed by the date specified, using best efforts and meeting safety and service requirements.

(c) Grantees may not seek reimbursement for their relocation expenses from the city except:

(1) Where the grantee has paid for the relocation cost of the same facilities at the request of the city within the past five years, the grantee's share of the cost of relocation will be paid by the city;

(2) Where aerial to underground relocation of authorized facilities is required by the city under subsection (a) of this section for grantees with an ownership share of the aerial supporting structures, the additional incremental cost of underground compared to aerial relocation, or as provided for in the approved tariff if less, will be paid by the city; and

(3) Where the city requests relocation under subsection (a) of this section solely for aesthetic purposes.

(d) Where a project in subsection (a) of this section is primarily for private benefit, the private party or parties shall reimburse the cost of relocation in the same proportion to their contribution to the costs of the project. Grantees will not be precluded from recovering their costs associated with relocation required under subsection (a) of this section, provided that the recovery is consistent with subsection (c) of this section and other applicable laws.

(~~d~~e) A city may require relocation of facilities at grantee's expense in the event of an unforeseen emergency that creates an immediate threat to public health, welfare and safety.

26.24.080 Removal of unauthorized facilities.

Within thirty days following written notice from the city, any grantee~~, telecommunications carrier or other person~~ that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the rights-of-way shall, at its own expense, remove such facilities or appurtenances from the rights-of-way. If such grantee fails to remove such facilities or appurtenances, the city may cause the removal and charge the grantee for the costs incurred. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

(1) Upon expiration or termination of the grantee's license or franchise.

(2) Upon abandonment of a facility within the rights-of-way.

(3) If the system or facility was constructed or installed without the prior grant of a license or franchise.

(4) If the system or facility was constructed or installed without the prior issuance of a required construction permit.

(5) If the system or facility was constructed or installed at a location not permitted by the grantee's license or franchise.

(6) Any such other reasonable circumstances affecting public health, safety and welfare deemed necessary by the public works director.

26.24.090 Failure to relocate.

If a grantee is required to relocate, change or alter the telecommunications facilities hereunder and fails to do so, the city may cause such to occur and charge the grantee for the costs incurred.

26.24.100 Emergency removal~~ or relocation of facilities~~.

The city retains the right and privilege to cut or move any telecommunications facilities located within the rights-of-way as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

26.24.110 Damage to grantee's facilities.

To the extent permitted by Washington law, the city shall not be liable for any damage to or loss of any telecommunications facility within the rights-of-way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the rights-of-way by or on behalf of the city.

26.24.120 Restoration of rights-of-way.

Restoration shall comply with the following:

(1) When a grantee, or any person acting on its behalf, does any work in or affecting any rights-of-way, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to the same condition which existed before the work was undertaken. As used in this section, "promptly" shall mean as required by the city's public works director in the reasonable exercise of the director's discretion.

(2) If weather or other conditions do not ~~permit~~ allow for the complete restoration required hereunder, the grantee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the grantee's sole expense, and the grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(3) A grantee or other person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights-of-way.

26.24.130 Facilities maps.

Each grantee shall provide the city with an accurate as-built map or maps certifying the location of all telecommunications facilities within the rights-of-way. Each Grantee shall provide updated as-built maps annually.

26.24.140 Duty to provide information.

Within ten days of receipt of a written request from the city ~~clerk~~ manager, each grantee shall furnish the city ~~clerk~~ manager with information sufficient to demonstrate:

(1) That grantee has complied with all requirements of this title.

(2) That all ~~taxes and~~ fees due the city in connection with the telecommunications services and facilities provided by the grantee have been properly collected and paid by the grantee.

(3) That grantee has furnished the city with all necessary information with respect to grantee's facilities in city rights-of-way.

~~**26.24.150 Leased capacity.**~~

~~A grantee shall have the right to offer or provide capacity or bandwidth to another telecommunications provider; provided, that the proposed lessee or person shall comply with all of the requirements of this title.~~

26.24.160 Grantee insurance.

Unless otherwise provided by a franchise or license, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies (which may be evidenced by an acceptable certificate of insurance) insuring both the grantee and the city, and its elected and appointed officers, officials, agents, representatives and employees as additional insureds:

(1) Comprehensive general liability insurance with limits not less than:

(a) Five million dollars for bodily injury or death to each person;

(b) Five million dollars for property damage resulting from any one accident; and

(c) Five million dollars for all other types of liability.

(2) Automobile liability for owned, non-owned and hired vehicles with a limit of three million dollars for each person and three million dollars for each accident.

(3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars.

(4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars.

(5) The ~~liability~~ insurance policies required by this section shall be maintained at all times by the grantee. Each such insurance policy or certificate of insurance shall contain the following endorsement:

> It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until thirty days after receipt by the city, by registered mail, of a written notice addressed to the city manager of such intent to cancel or not to renew.

(6) Within ten days after receipt by the city of said notice, and in no event later than twenty days prior to said cancellation, the grantee shall obtain and furnish to the city replacement insurance policies or a certificate of insurance meeting the requirements of this title.

26.24.170 General indemnification.

In addition to and distinct from the insurance requirements of this title, each grantee hereby agrees to defend, indemnify and hold the city and its officers, officials, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorneys' fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the acts, omissions, failure to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this title or by an agreement made or entered into pursuant to this title, provided that a grantee shall not be required to indemnify the city to the extent the damages, loss and expenses are the result of negligence by the city, its employees, agents or contractors.

26.24.180 ~~Performance and financial guarantees~~ Forms of security.

Before a license or franchise granted pursuant to this title is effective, and as necessary thereafter, the grantee shall provide and deposit such moneys, bonds, letters of credit or other instruments in form and substance acceptable to the city as may be required by this title, or by an applicable license or

franchise agreement or other applicable code, ordinance, rules or regulations of the city.

26.24.190 Security fund.

Each grantee shall establish a permanent security fund with the city by depositing the amount of up to fifty thousand dollars with the city in cash, an unconditional letter of credit, or other instrument acceptable to the city, which fund shall be maintained at the sole expense of grantee so long as any of grantee's telecommunications facilities are located within the rights-of-way. This security fund shall be separate and distinct from any other bond or deposit required.

(1) The fund shall serve as security for the full and complete performance of grantee's obligations under this title, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the city.

(2) Before any sums are withdrawn from the security fund the city manager or designee shall give written notice to the grantee:

(a) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the city has incurred by reason of the grantee's act or default;

(b) Providing a reasonable opportunity for the grantee to first remedy the existing or ongoing default or failure, if applicable;

(c) Providing a reasonable opportunity for the grantee to pay any moneys due the city before the city withdraws the amount thereof from the security fund, if applicable; and

(d) That the grantee will be given an opportunity to review the act, default or failure described in the notice with the city manager or designee.

(3) Grantee shall replenish the security fund within fourteen days after written notice from the city ~~clerk~~ that there is a deficiency in the amount of the fund.

26.24.200 Construction and completion bond.

Unless otherwise provided in a license or franchise agreement, a bond written by a surety acceptable to the city equal to at least one hundred percent of the estimated cost of constructing the grantee's telecommunications facilities within the rights-of-way shall be deposited before a construction permit is issued.

(1) The construction bond shall remain in force until ninety days after substantial completion of the work, as determined by the public works director, including restoration of rights-of-way and other property affected by the construction. However, in addition to the foregoing, the city reserves the right to require a maintenance bond as per Chapter 175 of the city zoning code.

(2) The construction bond shall guarantee, to the satisfaction of the city:

(a) Timely completion of construction;

(b) Construction in compliance with applicable plans, permits, technical codes and standards;

(c) Proper location of the facilities as specified by the city;

(d) Restoration of the rights-of-way and other property affected by the construction;

(e) The submission of "as-built" maps after completion of the work as required by this title;

(f) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

26.24.210 Acts at grantee's expense.

Any act that a grantee is or may be required to perform under this title, a license, franchise~~, or cable franchise~~ or applicable law shall be performed at the grantee's expense.

26.24.220 Coordination of construction activities.

All grantees are required to cooperate with the city and with each other as follows:

(1) By February 1st of each year, each grantee shall provide the public works director with a schedule of its proposed construction activities which may affect the rights-of-way for that year. Failure to provide such schedule on a timely basis may impact upon the ability of a grantee to obtain permits for its construction activities during the course of that year.

(2) Each grantee shall meet with the city, other grantees and users of the rights-of-way annually or as determined by the city to schedule and coordinate construction.

(3) All construction locations, activities and schedules shall be coordinated, as ordered by the public works director, to minimize public inconvenience, disruption or damages.

26.24.230 Assignments or transfers of grant.

Repealed by Ord. 3796.

26.24.240 Transactions affecting control of grant.

Repealed by Ord. 3796.

26.24.250 Revocation or termination of grant.

A license or franchise for telecommunications granted by the city to use or occupy rights-of-way may be revoked for any one or more of the following reasons:

(1) Construction or operation at an unauthorized location;

(2) Material misrepresentation ~~or lack of candor~~ by or on behalf of a grantee in any application to the city;

(3) Abandonment of telecommunications facilities in the rights-of-way without the express written permission of the City;

(4) Failure to relocate or remove telecommunications facilities as required in this title;

(5) Failure to pay ~~taxes, compensation,~~ fees or costs when and as due the city;

(6) Violation of a material provision of this title;

(7) Violation of a material term of a license or franchise.

26.24.260 Notice and ~~duty to~~ cure.

In the event that the city ~~clerk~~ manager believes that grounds exist for revocation of a license or franchise, the grantee shall be given written notice of the apparent violation or noncompliance, be provided a short and concise statement of the nature and general facts of the violation or noncompliance, and be given a reasonable period of time not exceeding thirty days from receipt of written notice to furnish evidence:

(1) That corrective action has been, or is being, actively and expeditiously pursued to remedy the violation or noncompliance.

(2) That rebuts the alleged violation or noncompliance.

(3) That it would be in the public interest to impose ~~some monetary damages, penalty~~ civil penalties or sanctions less than revocation.

26.24.270 Hearing.

In the event that a grantee fails to provide evidence reasonably satisfactory to the city ~~clerk~~ manager as provided hereunder, the city ~~clerk~~ manager shall make a preliminary determination as to whether an event of default by grantee has occurred and initially prescribe remedies in accordance with Section 26.24.280. In the event that a grantee wants to appeal such determination, it shall do so to the hearing examiner. In the event a further appeal is sought by the grantee, it shall make such appeal to the city council. With respect to apparent violations or noncompliance, appeals provided for herein shall be made within 14 days of a determination adverse to grantee. In any event, the city shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

26.24.280 Standards for revocation or lesser sanctions.

If persuaded that the grantee has violated or failed to comply with a material provision of this title or of a franchise or license or applicable codes, ordinances, statutes, ~~or~~ rules ~~and~~ or regulations, the city ~~clerk~~ manager shall make a preliminary determination whether to revoke the license or franchise, and issue a written decision relating thereto, or to establish some monetary damages, ~~penalty,~~ lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

(1) Whether the misconduct was egregious.

(2) Whether substantial harm resulted.

(3) Whether the violation was intentional.

(4) Whether there is a history of prior violations of the same or other requirements.

(5) Whether there is a history of overall compliance.

(6) Whether the violation was voluntarily disclosed, admitted or cured.

26.24.290 Non-telecommunications services.

If a telecommunications provider intends to provide services that do not fall within the scope of "telecommunications services," as defined in this code or ~~the Federal Telecommunications Act of 1996~~ federal law (as it now exists or is hereafter amended) or "information services" as defined by the FCC, then the provider shall be required to obtain a separate franchise or other authorization from the city for those services. The separate franchise or authorization process for non-telecommunications services shall not be governed by this title (except for cable services).

Chapter 26.28
CONSTRUCTION OF TELECOMMUNICATIONS FACILITIES

Sections:

26.28.010 Construction standards.
26.28.020 Construction codes.
26.28.030 Construction permits.
26.28.040 Applications.
26.28.050 Engineer's certification.
26.28.060 Traffic control plan.
26.28.070 Issuance of permit.
26.28.080 Construction schedule.
26.28.090 Compliance with permit.
26.28.100 Display of permit.
26.28.110 Surveyor ~~of underground facilities~~.
26.28.120 Noncomplying work.
26.28.130 Completion of construction.
26.28.140 As-built drawings.
26.28.150 Restoration of improvements.
26.28.160 Landscape restoration.

26.28.170 Location of facilities.
26.28.180 *Repealed.*
26.28.190 *Repealed.*
26.28.200 Construction surety.
26.28.210 Applicability of Chapter 26.28 to telecommunications providers or carriers

26.28.010 Construction standards.

No person shall commence or continue with the construction, installation or operation of telecommunications facilities within the city except as provided in this title; provided, however, this chapter shall be in addition to the requirements of the city standard plans contained in the most recent utility policy, ~~policy section dated May 5, 1993 as such was enacted or has or in the future is amended from time to time ("utility policy")~~, and in the event of a conflict between the aforesaid utility policy and this chapter, the standards of the utility policy shall control.

26.28.020 Construction codes.

Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local construction codes, safety codes, and rules and regulations including, but not limited to, the National Electrical Safety Code. Telecommunications facilities shall comply with the most recent standards in the utility policy and other public works policies and standards and applicable city codes including, but not limited to, Title 19, Streets and Sidewalks, as it now exists or is hereafter amended. ~~In the event of a conflict between the standards in the utility policy, public works standards and other local standards and titles, those titles, public works standards and other local standards shall apply.~~

26.28.030 Construction permits.

No person shall construct or install any telecommunications facilities within the city without first obtaining a construction permit therefore, provided, however:

(1) No permit shall be issued for the construction or installation of telecommunications facilities within the city unless the telecommunications carrier has filed a registration statement with the city pursuant to this title.

(2) Except as otherwise provided in this title, no permit shall be issued for the construction or installation of telecommunications facilities in the rights-of-way unless the telecommunications carrier has applied for and received a franchise or license pursuant to this title.

(3) Unless otherwise provided by law, a franchise or license, no permit shall be issued for the construction or installation of telecommunications facilities without payment of all fees pursuant to this title.

(4) No telecommunications permit shall be issued to cut any public way, the surface of which is less than five years old, unless the grantee overlays the surface of any public way which is cut by the grantee.

26.28.040 Applications.

Applications for permits to construct telecommunications facilities shall be submitted upon forms provided by the city. The applicant shall pay all associated fees and shall include any additional information as requested by the public works director. The application shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

(1) That the facilities will be constructed in accordance with all applicable codes, rules and regulations.

(2) The location and route of all facilities to be installed on existing utility poles.

(3) The location and route of all facilities to be located under the surface of the ground, including line and grade proposed for the burial at all points along the route which are within the rights-of-way.

(4) To the extent such information is made accessible to grantee, the location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the rights-of-way along the route proposed by the applicant.

(5) The location of all other facilities to be constructed within the city, but not within the rights-of-way, in accordance with applicable city building and land use regulations.

(6) The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the rights-of-way.

(7) The location, dimension and types of all trees that will be impacted during construction within or adjacent to the rights-of-way along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

~~**26.28.050 Engineer's certification.**~~

~~Unless otherwise provided in a license or franchise, all permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations. The engineer shall also provide a certificate of the construction cost estimate.~~

26.28.060 Traffic control plan.

All permittees shall comply with the Manual on Uniform Traffic Control Devices with respect to traffic control. The City may require a traffic control plan ~~All permit applications which involve work on, in, under, across or along any rights-of-way shall be accompanied by a traffic control plan~~ demonstrating the protective measures and devices that will be employed.

26.28.070 Issuance of permit.

Within thirty days after submission of all plans and documents required of the applicant and payment of necessary permit fees, the public works director, if satisfied that the application, plans and documents comply with all requirements of this title, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the public works director may deem necessary or appropriate.

26.28.080 Construction schedule.

The City may require a permittee ~~shall~~ to submit a written construction schedule to the public works director ~~ten working days~~ before commencing any work in or about the rights-of-way. ~~The permittee shall further provide written notification to the public works director not less than five working days in advance of any excavation or work in the rights-of-way.~~

26.28.090 Compliance with permit.

All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The public works director and his or her representative shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements.

26.28.100 Display of permit.

The permittee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the public works director at all times when construction work is occurring.

26.28.110 Surveyor ~~of underground facilities~~.

If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standards, the permittee shall cause the location of its facilities to be verified by a registered Washington land surveyor. The permittee, at its expense, shall relocate any facilities which are not located in compliance with permit requirements.

26.28.120 Noncomplying work.

Upon order of the public works director, all work which does not comply with the permit, the approved plans or specifications for the work or the requirements of this title shall be removed.

26.28.130 Completion of construction.

The permittee shall promptly complete all construction activities so as to minimize disruption of the rights-of-way and other public and private property. All construction work authorized by a permit within rights-of-way, including

restoration, must be completed within ninety days of the date of issuance or at such other interval as the city may specify in writing upon issuance of the permit.

26.28.140 As-built drawings.

~~Within thirty days after completion of construction~~Upon request, the permittee shall furnish the public works director with ~~two~~ a ~~complete~~ set~~s~~ of ~~plans~~locational drawings, ~~drawn to scale and~~ certified to the city as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit. In the event the permittee installs facilities for the city, the permittee shall provide the city with as-built drawings of the city facilities, drawn to scale.

26.28.150 Restoration of improvements.

Upon completion of any construction work, the permittee shall promptly repair, but in no event longer than such time as may be established by the city during permit review, any and all public and private property, improvements, fixtures, structures and facilities which are damaged during the course of construction, restoring the same to their condition before construction commenced.

26.28.160 Landscape restoration.

(a) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, operation, repair or replacement of telecommunications facilities, which is done pursuant to a franchise, license or permit, shall be replaced or restored to the condition existing prior to performance of the work. Significant trees removed shall be replaced. Significant trees are defined as an existing healthy tree which, when measured four feet above grade, has a minimum diameter of:

(1) Six inches for evergreens, except as provided under subsections (a)(2) or (4) of this section; or

(2) Eight inches for Douglas fir and hemlock trees; or

(3) Twelve inches for deciduous trees; or

(4) A tree that, because of its unique species, environment or location, is determined by the public works director to be a significant tree.

(b) All restoration work within the rights-of-way shall be done in accordance with landscape plans approved by the public works director.

26.28.170 Location of facilities.

Unless otherwise required in current or future city ordinances regarding underground construction requirements, all facilities shall be constructed, installed and located in accordance with the following terms and conditions:

(1) ~~Telecommunications facilities shall be installed within an existing underground duct or conduit whenever excess capacity exists within such utility facility.~~

~~(2)~~ A franchisee with written authorization to install overhead facilities shall install its telecommunications facilities on pole attachments to existing utility poles only, and then only if surplus space is available.

(~~3~~2) Whenever ~~all~~ existing telephone, electric utilities~~, cable facilities~~ or telecommunications facilities are located or relocated underground within rights-of-way, a franchisee with written authorization to occupy the same rights-of-way must also locate or relocate its telecommunications facilities underground.

(~~4~~3) Whenever ~~all~~ new ~~or existing~~ telephone, electric utilities~~, cable facilities~~ or telecommunications facilities are located ~~or relocated~~ underground within rights-of-way, a franchisee that currently occupies or will occupy the same rights-of-way shall concurrently ~~relocate~~ place its telecommunications facilities underground at its expense.

26.28.180 Conduit occupancy.

Repealed by Ord. 3796.

26.28.190 Occupancy of city owned conduit.

Repealed by Ord. 3796.

26.28.200 Construction surety.

Prior to issuance of a construction permit, the permittee shall provide a construction bond, as provided in this title.

26.28.210 Applicability of Chapter 26.28 to telecommunications providers or carriers

Notwithstanding anything in Title 26 to the contrary, any reference in this Chapter 26.28 to a grantee, franchisee, franchise, permittee or permit shall apply only to telecommunications providers or carriers and not to cable operators.

Chapter 26.32
FEES

Sections:

26.32.010 Registration fee.
26.32.020 Pre-application conference and application fee.
26.32.030 Refund.

26.32.040 Other city costs.
26.32.050 Reserved compensation for use of rights-of-way.
26.32.060 Compensation for use of city property.
26.32.070 Construction permit fee.
26.32.080 Annual fees.
26.32.090 Regulatory fees and compensation not a tax.
26.32.100 Fee review process, city ~~clerk~~ and hearing examiner.
26.32.110 Applicability of Chapter 26.32 to telecommunications providers or carriers

26.32.010 Registration fee.

Each application for registration as a telecommunications carrier or provider shall be accompanied by a fee in such amount as the city ~~clerk~~ determines is required to cover all direct and indirect costs associated with the registration process.

26.32.020 Pre-application conference and application fee.

Prior to the acceptance of an application by the city from a telecommunications carrier or provider, the applicant~~s~~ shall participate in a pre-application conference with the city for the purpose of establishing the application fee. The purpose of establishing the application fee is to ensure the recovery of the city's direct and indirect costs and expenses associated with the review of the application including, but not limited to, actual costs of city staff time and resources as well as any outside consultation expenses which the city reasonably determines are necessary to adequately review and analyze the application. The application fee shall be established by the city ~~clerk~~ and shall be a minimum of up to two thousand five hundred dollars and with the maximum fee established depending upon estimated reasonable city costs and expenditures in review of the application. All disputes in the amount required shall be resolved by an appeal to a hearing examiner. All franchisee and licensee applicants shall deposit the application fee with the city. This application fee shall be applied towards actual expenses and costs of the city. Any unencumbered application fees shall be refunded to the applicant upon written request of the applicant, but in no event earlier than sixty days after granting or denial of the permit. In the event the city's actual costs associated with application review exceed the application fee, the applicant shall reimburse the city within thirty days of receiving written notice from the city requesting reimbursement. The city's notice shall contain the reimbursement amount and a description of the costs incurred by the city in connection with review of the application.

26.32.030 Refund.

An applicant whose license or franchise application has been withdrawn, abandoned or denied shall, within sixty days of its application and review fee payment, be refunded the balance of its deposit under this section, less:

(1) The registration fee; and

(2) All ascertainable costs and expenses incurred by the city in connection with the application.

26.32.040 Other city costs.

To the extent allowed by law, all grantees shall, within thirty days after written demand therefor, reimburse the city for all direct and indirect costs and expenses incurred by the city in connection with any modification, amendment, renewal or transfer of a license or franchise.

26.32.050 Reserved compensation for use of rights-of-way.

To the extent permitted by law, the city reserves its right to fix a fair and reasonable compensation to be paid for the authorization granted to a grantee. Nothing in this title shall prohibit the city and a grantee from agreeing upon the compensation.

26.32.060 Compensation for use of city property.

If the right is granted, by lease, license, franchise or other manner, to use and occupy city property for the installation or use of telecommunications facilities, the compensation to be paid shall be fixed by the city (to the extent permitted by law) or as otherwise agreed between the city and grantee.

26.32.070 Construction permit fee.

Prior to issuance of a construction permit, the permittee shall pay a permit fee to be calculated in accordance with Section 5.74.040 of this code. The purpose of the construction permit fee shall be to recover the city's actual attributable direct and indirect construction plan review costs and expenses, as well as damage or rights-of-way value diminution as a result of permittee's occupancy of the right-of-way.

26.32.080 Annual fees.

Each grantee shall pay an annual fee (if any) to the city equal to the city's direct and indirect costs in connection with reviewing, inspecting and supervising the use and occupancy of the rights-of-way.

26.32.090 Regulatory fees and compensation not a tax.

The regulatory fees and costs provided for in this title, and any compensation charged and paid for the rights-of-way provided for herein, are separate from, and additional to, any and all federal, state, local and city taxes as may be levied, imposed or due from a telecommunications carrier or provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services.

26.32.100 Fee review process, city ~~clerk~~ and hearing examiner.

Any applicant or permittee may initiate a review of the fees established in Sections 26.32.020 through 26.32.080 of this chapter. Within ten days of notice of the fee ~~determined by~~ from the city ~~clerk~~, the applicant or permittee may appeal to the hearing examiner. Pursuant to the provisions of Chapter 3.34 of this code, the hearing examiner is authorized to review and make determinations as provided herein.

26.32.110 Applicability of Chapter 26.32 to telecommunications providers or carriers

Notwithstanding anything in Title 26 to the contrary, any reference in this Chapter 26.32 to an applicant, grantee, franchisee, franchise, permittee or permit shall apply only to telecommunications providers or carriers and not to cable operators.

Chapter 26.36
MISCELLANEOUS

Sections:

26.36.010 Context.

26.36.010 Context.

When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

Section 2. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.107, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006.

Signed in authentication thereof this _____ day of _____, 2006.

_____
MAYOR

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

H:\CAO\ORD\Telecomm Title 26 Revisions 2006 Final.doc

PUBLICATION SUMMARY
OF ORDINANCE NO. 4033

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TELECOMMUNICATIONS AND CABLE SERVICES.

SECTION 1. Amends portions of Title 26 of the Kirkland Municipal Code relating to telecommunications and cable services.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2006.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

_____
City Clerk

CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.587-3225
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Eric Shields, Planning Director
Nancy Cox, Development Review Manager

Date: January 5, 2006

Subject: HOME OCCUPATIONS

RECOMMENDATION

The Council should provide direction to staff about issues related to home occupations that have come to light recently, and advise staff if other issues should be analyzed. A study session is scheduled in May, 2006 to discuss whether or not code amendments are needed to clarify the rules.

BACKGROUND DISCUSSION

The Council has recently been made aware of several home occupations. Individuals have spoken under Items from the Audience about cases of concern to them. The City's Code Enforcement officers monitor the high profile home occupation cases on an on-going basis. Since many of the high profile cases are still open, this memo will discuss the issues generally, rather than the cases specifically.

Home Occupations are regulated under KZC Section 115.65 (attached). The code lays out a number of regulations that must be met for home occupations to be permitted (KZC Section 115.65.2). Typically the cases involve proving that one or more of these regulations are not met. In code enforcement appeal hearings, the City has the burden of proof by a preponderance of the evidence that a violation has occurred.

Residency status
The issue in one case is whether or not the business is carried on exclusively by family members who reside in the dwelling unit (KZC 115.65.2.b 1). The Code Enforcement officers are trying to determine whether the home business owner resides at the business location as they say they do. This is a difficult issue to investigate and prove without becoming overly involved in personal affairs. A code amendment that defines the residency language more clearly than "resides in the dwelling unit" can be considered, however, it may never be possible to completely ensure residency.

Residential Character
The issue in another case is whether or not there have been interior alterations that change the residential character of the dwelling (115.65.2.b 3). For example, the Zoning Code is silent about the number of square feet than can be remodeled for the purpose of the home business. For this issue, code amendments could be considered to clarify "residential character."

Staff will provide more analysis for the May study session about the interplay between the International Building Code requirements for disabled accessibility and home occupations. Certain of these requirements could also impact the residential character of a home occupation.

Type of business

It has been suggested that certain businesses should be banned as home occupations because by their nature they will be troublesome to neighbors. The code (KZC 115.65.2.b.6) does prohibit the following: motor vehicle businesses, repair or sales of large equipment, welding, kennels, inventory storage, restaurants, and landscaping. The code states that "office-only" activities for these uses may be allowed. The City could consider banning more businesses, but it may be difficult to think of and list every type of business that should be banned. Another approach would be to review the standards in the code to ensure they are effective in regulating the home occupations. Still, there may be some such as construction companies that the Council may want to consider prohibiting outright.

Chronic Cases

Most suspected violations of the home occupation rules are not resolved quickly due to the difficulty encountered making the case and working it through the code enforcement system. The City's system is to issue a Notice of Violation describing the aspects of the code that are violated and the means to correct. If that is not done in a timely manner then a Notice of Civil Infraction is issued establishing a monetary penalty. The Notice of Civil Infraction may be appealed to the Hearing Examiner. In most circumstances, this hearing would take at least a month to schedule. The monetary penalty is due within 7 days of the Notice of Civil Infraction or if an appeal is filed within 7 days of the Examiner's decision. When not paid, the cases are assigned to the City's collection agency. The collection agency brings suit to collect the fines when parties are not cooperative. One question that can be considered is whether there are other tools that the City could use that would provide a faster response to this type of chronic violation.

ATTACHMENT

Home Occupation Regulations, KZC 115.65

c. Radio Tower – A radio tower and antenna structure for use by a noncommercial, licensed amateur operator shall be allowed, if the Planning Official determines that:

1) A reasonable effort is made to minimize radio tower and antenna structure visibility from adjacent properties, while still permitting effective operation; and

2) The radio tower and antenna structure does not extend higher than reasonably necessary to operate effectively; and

3) The radio tower and antenna structure does not physically interfere with nearby utility lines.

Notice of filing application for building or other permit to construct a radio tower and/or antenna shall be given in the manner required by KZC 145.22 as to each such application which shows the proposed tower and/or antenna to either exceed the maximum allowable height for the zone in which it is located, or be within 20 feet of an electrical power or telecommunication utility line.

Any person believing a radio tower or antenna structure does not comply with the foregoing may request in writing a determination of compliance from the Planning Director, providing such request is filed with the City and a copy delivered to the permit applicant within 14 days of the date of publication of the notice of filing. The Planning Director shall make such determination utilizing Process I described in Chapter 145 KZC. In making his determination, the Planning Director shall take into consideration the strong federal interest in promoting amateur communications and the rules adopted by the Federal Communications Commission in support of that interest to regulate the amateur service (47 CFR Part 97 and FCC PRB-1).

d. Structures Requiring Design Review – If a structure is reviewed through design review pursuant to Chapter 142 KZC and has a peaked roof, the peak may extend the following amount above the height limit:

1) Five feet, if the slope of the roof is equal to or greater than three feet vertical to 12 feet horizontal; or

2) As allowed by the underlying zone.

115.65 Home Occupations, Accessory Dwelling Units, and Other Accessory Components of Residential Uses

1. General – The regulations of this section apply to every residential use within the City.

2. Home Occupations

a. Purpose – The purpose of this section is to allow commercial occupations incidental to residential uses to be located in residences while guaranteeing all residents freedom from excessive noise, excessive traffic, nuisance, fire hazard, and other possible effects of commercial uses being conducted in residential neighborhoods.

b. Home Occupation Regulations – A home occupation may be conducted subject to the following regulations:

A home occupation is permitted if it:

1) Is carried on exclusively by family members who reside in the dwelling unit and not more than two additional people who are not residents of the dwelling;

2) Is conducted indoors and has no outside storage, exterior indication, or outside activity, including equipment stored on vehicles;

3) Requires no alteration to the interior or exterior of the dwelling that changes its residential character;

4) Involves activities, including but not limited to heavy equipment, power tools, power sources, or other equipment, which do not result in noise, vibration, smoke, dust, odors, heat, or other conditions that exceed in duration or intensity, such conditions normally produced by a residential use;

5) Has no pickup or delivery by commercial vehicles; however, occasional mail and courier deliveries are permitted;

6) Does not include the following businesses:

   a) Motor vehicle-related businesses including but not limited to auto, truck, body work, detailing, painting, or taxicab, van shuttle, limousine, towing, or other transportation service or sales;

   b) Repair or sales of large appliances or heavy equipment;

   c) Welding;

   d) Kennels or commercial stables;

   e) Inventory storage of more than 1,200 cubic feet of materials;

   f) Restaurants; and

   g) Landscaping.

   Office-only activities for the above uses may be allowed as home occupations; provided, all other requirements of this section are met;

7) Does not include more than four persons per day and no more than two persons at any time coming to and leaving from the subject property for goods or services. Customer visits or deliveries to a home occupation shall be between the hours of 8:00 a.m. and 8:00 p.m.(not applicable to a bed and breakfast house);

8) Operates no more than one vehicle, van, truck or similar vehicle, not exceeding a gross vehicle weight of 10,000 pounds; and

9) Has no signs other than one building-mounted, nonilluminated sign with a maximum size of two square feet.

10) For a bed and breakfast house, the following additional regulations apply in addition to those listed above:

   a) It is operated by the owner of the dwelling in which it is located and it is the primary residence of the owner/operator;

   b) There is a maximum of two guest rooms;

   c) Guests stay a maximum of 30 days;

d) Food service shall be limited to serving overnight guests of the establishment. Individual rooms shall not be equipped with cooking facilities;

e) The applicant may be required to provide up to one parking stall per guest room. The applicant shall demonstrate the parking provided will be adequate based on the following criteria:

i. The number of guest rooms;

ii. The number of permanent residents of the dwelling proposed for the bed and breakfast;

iii. The number of parking stalls that can be accommodated in a garage or driveway; and

iv. The number of legal on-street parking stalls immediately adjacent to the bed and breakfast;

f) Concentrations of Bed and Breakfast Houses – Where a bed and breakfast house is proposed within 500 feet of another bed and breakfast house, the applicant shall demonstrate that the neighborhood will not be adversely affected by the concentration.

c. A home occupation which does not meet one or more of the requirements of subsection (2)(b) of this section may be approved using Process IIA, described in Chapter 150 KZC, if it:

1) Will not harm the character of the surrounding neighborhood;

2) Will not include outdoor storage and/or operation of building materials, machinery, commercial vehicles, or tools, except if it meets the following criteria:

a) Is appropriately screened from other properties;

b) Does not emit noise, odor, or heat; and

c) Does not create glare; and

3) Does not create a condition which injures or endangers the comfort, repose, health or safety of persons on abutting properties or streets; and

4) Will not generate excessive traffic or necessitate excessive parking; and

5) For bed and breakfast houses, there will be a maximum of four guest rooms.

d. Licensing – A business license shall be required for all home occupations.

e. Revocation of Home Occupation Permit – Upon determination that there has been a violation of any decision criteria or condition of approval of a home occupation permit granted pursuant to subsection (2)(c) of this section, the Director of Planning and Community Development may revoke a home occupation permit pursuant to the provisions of Chapter 170 KZC, Zoning Code Enforcement.

3. Accessory Structure (detached dwelling unit uses only) – Structures, to be used as a tool shed, greenhouse, private garage, accessory dwelling unit, barns or similar use are permitted. The total size of all such structures may not exceed the gross floor area of 1,200 square feet plus

CITY OF KIRKLAND

123 FIFTH AVENUE KIRKLAND, WASHINGTON 98033-6189 (425) 587-3225

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

To: Dave Ramsay, City Manager

From: Eric R. Shields, AICP, Planning Director
Michael Bergstrom, AICP, Consultant

Date: December 28, 2005

Subject: Single-Family Floor Area Ratios (FAR); File No. ZON05-00019

Recommendation:
Provide Staff with initial direction.

Introduction:
As requested in 2005 by the City Council, Staff and the Planning Commission are beginning to examine the Floor Area Ratios (FAR) established by the Zoning Code for single-family residences. The basic questions before us are:

1. Are the FARs working as intended?
2. If the FARs are not working as intended, how can they be corrected?
3. What is the best process to use to answer the foregoing questions?

Staff recently met with the Planning Commission to introduce this issue and to get initial feedback and direction. We are now requesting similar input from the City Council, to help us define a process that most efficiently and effectively answers the first two questions above.

Background:

In the late 1990's the City adopted FAR regulations for low-density zones, intended to result in houses that are sized in proportion to the lots on which they are built while reasonably accommodating the demands of today's housing market. FAR regulations do not apply within the boundaries of the Houghton Municipal Corporation. As the City Council is aware, some Kirkland residents are still concerned that some of the new houses being built in the city appear too large for their lot or seem out of scale with their surroundings.

Upon hearing residents' concerns, the City Council asked Staff and the Planning Commission to look into single family home sizes to determine whether the FAR provisions are achieving their intended goal, or whether changes to those provisions are needed. Staff met with the Commission on November 10, 2005. This memo summarizes the input received at that meeting, and proposes an approach for addressing the issue.

Existing Provisions:

FAR is the maximum allowable gross floor area permitted on a lot, and is expressed as a percentage of the lot size. FAR varies by zone, from a low of 20% (RS/RSX 35, PLA 16) to a high of 60% (RS/RSX 5.0, PLA 6C and 6E). The RS/RSX 12.5 zones allow 35%, and the RS/RSX 7.2 and 8.5 zones allow an FAR of 50%.

The following areas are excluded from FAR calculations:

- Attic area with less than five feet of headroom;
- Floor area with a ceiling height less than six feet above finished grade;
- Accessory structures located more than 20 feet from the main structure;
- Uncovered and covered decks, porches, and walkways;
- Upper levels of vaulted space, such as a vaulted entry.

Initial Planning Commission Input:

An October 31, 2005 memo prepared for the November 10 Planning Commission meeting describes current code provisions relating to FAR, as well as a brief analysis of 66 active single-family building permits that are subject to FAR regulations. In the interest of brevity, that information will not be repeated in this memo. The Planning Commission memo is included as Attachment 1 and should be referred to for further information.

Following is a summary of the input received by the Commission:

- A problem either does exist, or might exist; the issue is worth exploring further.
- The question should be framed carefully; don't just ask "Are new houses too big?"
- Large homes may be countering efforts for affordable (or "more affordable") housing.
- Accessory structures add visual bulk.
- Recent innovative housing projects provide examples of new construction built on a desirable scale.
- The FAR question should be examined on a parallel track with the innovative housing program.
- Neighborhood associations might be a good source of input.
- A broad-based community forum might be useful.

- Visual preference presentations might be helpful, but any depictions of specific houses that are considered "too big" should be disguised or generalized out of consideration for the owners.
- A walking tour with a focus group could help define the issue.
- Need to be realistic about market demands, economic forces.
- Land to building value ratios are important to know.
- Should include industry input (developers, builders, realtors, economists).
- Might consider allowing the same amount of FAR, but have it spread among more houses; e.g., if a property is large enough to short plat for two homes, maybe allow three homes as long as the total FAR does not exceed that allowed for two homes.
- Possibly consider a variable approach – greater FAR on smaller lots (or zones), lesser FAR on larger lots (or zones) (the Zoning Code currently does this to some extent).
- The exclusions to FAR calculations should be reviewed to see if they are appropriate.
- The problem might not only be one of scale, but also design; design review might be appropriate for houses exceeding a particular FAR.
- As an alternative to formal design review, "voluntary" design guidelines developed for the public might be helpful.

Options:

Process: As reflected by the Planning Commission's comments, several options are possible. Staff believes that the process should be generally in scale with possible solutions, which, as discussed below, are relatively few. The process should be focused, but broad enough to attract meaningful community and industry input. To that end, we propose the following:

- Meet with selected neighborhood associations, including at least Market and Norkirk. The meetings can be informal discussions, and might include walking tours of the neighborhoods.
- Seek the involvement of the Kirkland Heritage Society.
- Continue to collect and analyze data from single-family building permits that are subject to FAR regulations.
- Identify and seek input from appropriate industry representatives, to make sure we understand market forces, financing constraints, and the economic or market ramifications of any proposed changes to the FAR regulations.
- Identify the extent to which any changes to the FAR regulations will create nonconforming structures.
- Based on input received from the foregoing steps, determine whether more complex steps, such as community forums or visual preference surveys, would be beneficial.

Possible Code Changes: As seen from the discussion earlier in this memo, the FAR regulations are concise and do not contain a lot of elements that can be modified. If code changes are to occur, they would likely take one or more of the following forms:

- Reduce the allowable FAR in some or all zones, for example:
    - Reduce the FAR in the RS/RSX 5.0 zones to 50%; or

    - Reduce the FAR in the RS/RSX 5.0 zones to 55%, and in the RS/RSX 7.2 and 8.5 zones to 45%; and/or
- Modify the exclusions from FAR calculations, for example:
    - Modify the provisions for accessory structures separated by more than 20 feet, such as:
        - Allow a partial exclusion for such structures (e.g., allow 50% of the floor area to be excluded from the allowable FAR); or
        - Allow a partial exclusion, as above, and a greater exclusion (e.g., another 25% of the floor area) when the accessory structure will be used as an accessory dwelling unit; or
        - Remove the exclusion entirely; and/or
    - Count the upper levels of vaulted space toward FAR; and/or
    - Change how basement space is treated, such as:
        - Reduce the ceiling height that triggers the exclusion from 6 feet to 5 feet or some other dimension; or
        - Allow only a partial exclusion for basement space (e.g., 50%).

Conclusion:

If we create an appropriate review process and accurately identify the nature and scope of the problem, we should be able to arrive at a solution that balances the desires of the community with the demands of the housing market without making dramatic changes to the FAR regulations. We believe that the process and range of possible code changes outlined above will lead to that solution, and are seeking City Council concurrence on this approach. Once we receive direction from the City Council we will return to the Planning Commission with the work program, outline of the public process, and schedule.

Attachments:

1. October 31, 2005 Memo to the Planning Commission
2. November 10, 2005 Planning Commission Meeting Minutes

cc: Planning Commission
Angela Ruggeri
Michael Bergstrom
File

CITY OF KIRKLAND

123 FIFTH AVENUE KIRKLAND, WASHINGTON 98033-6189 (425) 587-3225

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

To: Kirkland Planning Commission

From: Eric R. Shields, AICP, Director
Michael Bergstrom, AICP, Consultant

Date: October 31, 2005

Subject: Single-Family Floor Area Ratios (FAR)

Recommendation:

Conduct study session and provide Staff with initial direction.

The Issue:

Are the City's floor area ratios resulting in houses that are sized proportionate to their lots?

Background:

In the late 1990's, the City adopted regulations establishing maximum floor area ratios (FAR) for single-family residences. These ratios are intended to result in houses that are sized in proportion to the lots on which they are built, while reasonably accommodating the demands of today's housing market. FAR regulations do not apply within the jurisdiction of the Houghton Community Council, and they only apply to low density residential zones.

The FAR determines the maximum allowable gross floor area (gfa) for a given lot in a given zone. The FAR is expressed as a percentage of the lot size. For example, in the RS 7.2 zone the FAR is 50% of the lot size. Therefore, if a lot in that zone contains 7,200 sf, the maximum gfa allowed is 3,600 sf (50% of 7,200 sf). A 7,800 sf lot would allow 3,900 gfa, an 8,200 sf lot would allow 4,100 gfa, and so forth.

In recent months Staff and some City Council members have heard concerns from Kirkland residents about the size of houses being built in their neighborhoods. There is a perception

ATTACHMENT 1

among some residents that many houses are too large and out of scale with their lot or their surroundings. It is unknown how broad that perception is or how deeply the concerns run, but it is voiced often enough that the Council has asked that Staff and the Planning Commission assess the issue.

Current Code Provisions:

The primary sections of the KZC governing FAR consist of the following:

A. Floor Area Ratio (FAR) is defined as: "The maximum permitted gross floor area allowed, expressed as a percentage of the lot size (Gross floor area / lot size = FAR). See KZC 115.42."

B. Gross Floor Area is defined as: "The total square footage of all floors in a structure as measured from either the interior surface of each exterior wall of the structure or, if the structure does not have walls, from each outer edge of the roof. Exterior areas may constitute gross floor area. See Chapter 115 KZC."

C. Floor Area Ratios: The Zoning Code establishes the following floor area ratios:

Zone	FAR *
RS 35 / RSX 35	20%
RS 12.5 / RSX 12.5	35%
RS 8.5 / RSX 8.5	50%
RS 7.2 / RSX 7.2	50%
RS 5.0 / RSX 5.0	60%
PLA 6C	60%
PLA 6E	60%
PLA 16	20%

* *Note that, while allowable gross square footage is calculated based on the actual lot size, the allowable FAR as a percentage of lot size, i.e., the "multiplier", is determined by the underlying zone. In other words, if a person had a legal nonconforming 5,000 sf lot in the RS 7.2 zone, the applicable FAR would be 50%, since that is the FAR established by the RS 7.2 zone. Similarly, if a person had an 8,500 sf lot in the RS 5.0 zone, the applicable FAR would be 60% since that is the FAR established by the RS 5.0 zone.*

D. KZC 115.42 – Floor Area Ratio (FAR) Calculation for Detached Dwelling Units in Low Density Residential Zones specifically excludes the following areas from FAR calculation:

1. Attic area with less than five feet of headroom;
2. Floor area with a ceiling height, including the horizontal supporting members for the ceiling, less than six feet above finished grade (this might include a basement or portion of a basement);
3. Accessory structures located more than 20 feet from the main structure; and
4. Uncovered and covered decks, porches, and walkways.

Although not specifically addressed in the above, the upper reaches of "vaulted" space, such as a vaulted entry, are not calculated in the FAR since there is not a physical floor separating the lower and upper portions of that vaulted space.

Discussion:

It is difficult to know whether the concerns expressed are due to the FAR provisions, or whether they are a reaction to the aggressive development or redevelopment of homesites in Kirkland that can result in rapid change to a neighborhood, or some other reason. Much of the lot-by-lot redevelopment that has occurred in recent years has taken place in the Market and Norkirk neighborhoods, while much of the new growth, through subdividing, has occurred in the North and South Rose Hill and South Juanita neighborhoods. Due possibly in part to their view orientation, in part to heightened permit activity, and in part to the dramatic visual and physical change that occurs with the replacement of a small 1940's-era house by a large contemporary house, many of the concerns about house size have come from residents of the Market and Norkirk neighborhoods, and to a somewhat lesser extent the Highlands neighborhood.

In September of 2005, Staff analyzed 66 active single-family building permit applications, submitted from 2003 to present, to get an indication of actual FAR proposed with new construction. It should be noted that this is not a complete evaluation of every single-family building permit applied for or issued during that time frame; rather, it is an examination of active permits on file with the City, and does not include any permits from the Houghton area since FAR regulations are not effective there.

A. <u>FAR Breakdown.</u> The 66 permits fall within the following FAR ranges:

51 – 60%	4 *
41 – 50%	38
31 – 40%	15
30% -	9
Total:	66

** All of the construction with FAR of more than 50% was in the RS 5.0 zone, which allows an FAR of 60%. Three of these permits were in Norkirk, one in Everest.*

B. FAR by Neighborhood:

Neighborhood	# Permits	Permits at Max FAR	FAR Range	FAR Mean	FAR Median
Norkirk	18	4 (22%)	15% - 60% *	44%	46%
Market	13	7 (53%)	37% - 50%	47%	50%
South Juanita	9	0 (0%)	22% - 49%	39%	44%
Highlands	7	1 (14%)	14% - 50%	39%	43%
Bridle Trails	6	2 (33%)	13% - 50% **	34%	***
South Rose Hill	6	1 (17%)	22% - 50%	36%	***
North Rose Hill	4	1 (25%)	36% - 50%	43%	***
Everest	3	0 (0%)	43% - 55% *	49%	***

* *Includes some permits in the RS 5.0 zone, which allows 60% FAR.*
** *Includes one permit in the RSX 35 zone, which allows 20% FAR.*
*** *Too small of a sample.*

The most active neighborhoods according to this sampling are Market and Norkirk. They also have comparatively high FARs, though the Norkirk figures are somewhat skewed by the inclusion of three permits in the RS 5.0 zone with FARs of 57%-60%. Seven of the 13 Market neighborhood permits were right at the maximum permitted FAR of 50%. Overall, 16 (24%) of the 66 permits were at the maximum permitted FAR of either 20%, 50% or 60%, and 18 of the 66 permits (27%) had an FAR of 50% or greater.

As noted above, KZC 115.42 excludes from the FAR calculation accessory structures that are located more than 20 feet from the main structure. Two of the 66 permits had such a structure, one in Market and one in Norkirk. Had these structures been included in the FAR, the Market permit FAR would have been 66%, rather than 50%, and the Norkirk permit would have been 51%, rather than 35%.

Questions

There are two primary questions at hand:

A. Are the FAR regulations working? If the FAR regulations are working as they were initially intended, and the resulting houses are consistent with community expectations and market demands, then there is no need to review the regulations in more detail or search for a solution.

To answer this question, it may be helpful to provide a process for public input and discussion. Such input would help determine to what extent the concerns exist, and might help identify more concrete examples of what is perceived as "too big". The process could involve a focus group, neighborhood association meetings, roundtable

discussions, study sessions, and/or other measures. We are requesting Planning Commission input on such a process.

B. <u>If the regulations are not working, how should they be corrected?</u> This question only needs to be pursued if it is determined that the regulations are not working. At this point, possible changes to the FAR regulations appear to consist of the following general approaches:

1. Reduce the allowable FAR;
2. Revise/remove the exceptions of KZC 115.42, such as removing the exception for accessory structures or taking a different approach to vaulted space; or
3. Some combination of the above.

These approaches have not been analyzed to any extent, and need not be until the first question is answered. It is likely that additional approaches will be defined as the process evolves and public input is received.

Conclusion:
At this stage, we are requesting preliminary feedback and direction from the Planning Commission. Your initial thoughts, if any, on whether a problem exists would be helpful, but not critical. Any input you may have on an effective and efficient process for obtaining public input on this issue would be welcome. Following our initial discussion with the Commission, Staff will return to the City Council for any additional direction the Council may wish to provide.

KIRKLAND PLANNING COMMISSION
MEETING MINUTES - November 10, 2005

1. CALL TO ORDER/ROLL CALL 7:00 p.m.
Present: Matthew Gregory, Carolyn Hayek (Chair), Tom Hodgson, Byron Katsuyama, Janet Pruitt, Kiri Rennaker, Karen Tennyson
Staff present: Eric Shields, Paul Stewart, Nancy Cox, Teresa Swan; Mike Bergstrom, Planning Consultant

2. ANNOUNCEMENT OF AGENDA 7:01 p.m.
Waived.

3. REQUESTS FROM THE AUDIENCE 7:01 p.m.
None.

4. PUBLIC HEARINGS 7:01 p.m.

A. 2005 Draft Comp Plan Amendments and Related Zoning Map Changes File No. ZON05-00026
Held the public hearing and discussed proposed amendments.

Ms. Swan reported on the minor "houskeeping" amendments for the Draft 2005 Comprehensive Plan Amendments. These amendments are in response to the recently amended Capital Improvement Plan and related Zoning Map changes to the Transportation Projects, Utilities, Surface Water, Parks, and Roads as outlined in her November 1, 2005 memo to the Planning Commission. The proposed new bicycle and pedestrian connection in the Highland Neighborhood will be reflected in the Citywide map if the Commission's recommendations are adopted by City Council. Also, corrections are proposed concerning "low" and "medium" density zone designations. There were two other minor corrections noted. Ms. Swan and Mr. Stewart responded to a few questions from the Planning Commission.

Chair invited public to speak on this issue. There was no public comment.

Motion: Approve Adoption of the Draft 2005 Comprehensive Plan Amendments and related Zoning Map changes. Carried.
Moved by Karen Tennyson, no second required.

5. STUDY SESSIONS 7:15 p.m.
A. Single Family Floor Area Ratios (FARs)
General discussion and provided initial direction to staff.

Mr. Bergstrom reported on the City's single family Floor Area Ratio (FARs) Regulations. He referenced his and Eric Shields' October 31, 2005 memo to the Planning Commission. He said the intent of the FAR is so that large houses don't dominate their neighborhood. Staff is seeking a way to learn whether there is a problem with the FARs working and how broad a problem the public feels this is. Staff has heard some converns, mostly from the Norkirk and Market Neighborhoods. He is seeking initial direction from the Planning Commission and

will touch base with City Council with regard to their input.

Mr. Bergstrom and Mr. Stewart addressed the Commission's questions. They discussed Net Floor Area vs. Gross Floor Area (GFA), Accessory Dwelling Units (ADUs), and what areas do not count in GFA. There was lengthy discussion about the increasing land value that encourages builders to tear down cottages and build large homes, as well as discussion on energy use, lot changes, loss of affordable housing, and courtyard housing.

It was suggested that a "visual preference" survey may be used to determine what the public's perception of this issue is so that it can be determined whether there is a problem and, if so, how extensive it is.

When asked by the Commission as to what avenues they could take on this issue, Mr. Stewart said that the Commission could address this in the form of a Focus Group, Open Community Forum, or a Study Session with the Commission with a possible goal to:

1. Reduce FARs
2. Review and revise exceptions
3. Review and revise the design process

Innovative housing, such as the Cottage Company development, was discussed.

The Commission wants to be sensitive as to issue of "problem" properties but keep specific or identifiable properties out of the discussion. They feel that, in order for the FAR review process to be profitable, it has to be well-targeted, not just asking the public, "Are homes too big?". The style of homes was discussed. Affordable housing was discussed.

Chair invited public comment.

George DeBolt, 11714 NE 73rd Street, Kirkland, suggested the use of a variable FAR, in which smaller lots would be allowed greater FAR (60% - 70%) and larger lots would be allowed less FAR (30% - 40%), to give builders incentive to build smaller houses. He complimented the Commission on the way it does business.

There was further discussion regarding the idea of FARs being tied to lot size instead of zone.

Chair summarized issues discussed:
a. Commission is willing to look at exclusions and determine whether any house should be tinkered with and, if so, which ones.
b. Commission is concerned regarding large lots in a 5,000 zone.
c. Commission is concerned that innovative housing be on some sort of parallel track.
d. Some members want an upper limit cap on the FAR
e. Some members think Design Review is something worth considering for single family in certain circumstances Mr. Stewart spoke regarding staff time being expended on FARs. He asked what kind of process the Commission would like to see used to identify possible problems with the regulations. Avenues mentioned previously were reiterated with an additional comment that, if visual preference was used, drawings should be used to disguise addresses of specific homes. It was suggested that builders, real estate agents, developers, and economists be given the opportunity to provide their expert opinion on the subject, in order to educate Commissioners who can then base decisions on what is actually happening in the real estate market. Questions posed to these experts might include, "What impact would smaller

FARs have on the market?" Chair suggested that Commissioners read the book, "The Not-So-Big House."

Mr. Stewart suggested that Staff come back to Commission with a summary of what was discussed tonight and also with some options as to how to get input and an outline of a public process. They will incorporate feedback they get from Council. Commission concurred.

Chair declared a brief break.

B. Homeless Encampment Zoning Code Amendments 9:01 p.m.
File No. ZON05-00028
Reviewed issues and provided direction to staff.

Ms. Cox referenced her and Mr. Shield's November 2, 2005 memo to Commission. She said that homelessness is a very serious problem in King County and gave statistics on the number of homeless in the area. She discussed SHARE/WHEEL Tent City 4 that was in Kirkland recently. "Share" is the men's section and "Wheel" is the women's section of Tent City. Ms. Cox said many in Tent City are employed and the length of their stay in that facility varies. She gave the history of Tent City 4 and said many couples stay there also. They are scheduled to move to Bellevue November 19th.

Ms. Cox said that a Temporary Use Permit was used to permit Tent City. She explained the parameters of this type of permit and the appeal process. She said there was a lot of public interest in Tent City 4 and businesses and residents in the immediate area were notified of the permit.

Ms. Cox said that Tent City requested a 90-day stay but the ordinance provided only a 60-day stay. City Council passed an Interim Zoning Regulation so that a change could be effected in the provision to allow the requested 90-day stay. There was a lot of public input to this process.

Churches that host Homeless Encampments were deemed by Judge Scott and upheld by Judge Lum as being an exercise of religion protected by the First Amendment. She stated that King County has a ten-year plan to end homelessness. She referenced the website www.cehkc.org that is sponsored by the Committee to End Homelessness in King County. Ms. Cox reviewed Interim Regulations that are in place now; City Council has asked Staff to have the permanent regulations in place by March 2006. She reviewed options for the permit process, frequency and duration, and performance standards. Commission posed questions that were addressed by Ms. Cox and Mr. Stewart.

Other websites mentioned were www.tentcitysolutions.com (opposed to homeless encampments) and www.eastsidecares.org (supportive of homeless encampments). There is also a City of Kirkland link under the Planning & Community Development page.

There is a Memorandum of Understanding between SHARE/WHEEL and City of Kirkland that states that Tent City 4 will not locate in Kirkland again until August 2006.

Ms. Cox discussed problems with the appeal process currently in the code and related options to the permit process. She said the frequency and duration clause currently is 60

days, once each 365 days to the "same user." Proposed change of verbiage was discussed at length.

Ms. Cox reviewed the actions of the Staff team that worked on the Tent City 4 permit, including Fire & Building, Police, and Planning, along with the Seattle/King County Health Department, and how issues were resolved through standards imposed. SHARE/WHEEL Code of Conduct was discussed.

Ms. Cox reported on restrictions imposed on Tent City by various cities.

Proposed changes, notices, and other issues outlined in her memo, were reviewed by Ms. Cox. She encouraged the Commission to review the cited websites. Hearings will be December 15 and December 19.

Commission asked questions that were addressed by Staff, regarding fencing around Tent City 4, security issues, the number of homeless in Kirkland, causes of death among the homeless, expenses incurred by the City due to Tent City 4 being here. Other questions will be referred to the City Attorney.

Staff requested feedback requested from the Commission: Is Staff's recommended approach as drafted in Chapter 127, with underlines and cross-outs, acceptable to Commission for use in the public hearing? Three issues discussed there are:

(1) The Permit process
(2) Frequency and Duration
(3) Performance Standards

Chair commented on Paragraph K, that grammar should be corrected to say, "All requirements of the Kirkland Police Department related to identified sex offenders or prospective residents shall be met."

Commission discussed at length Tent City, SHARE/WHEEL, and the three issues. They agreed on (1) the Permit Process; they discussed (2) the Frequency and Duration (every 12 months for 90 days) - some felt it is too lenient, some felt it is too restrictive - the majority agreed with it as stated; They agreed on (3) Performance Standards.

Commissioners supported the Tent City 4 project and Chair stated how proud she is of the City in how this issue was handled. Several Commissioners had spoken with the residents and other homeless in Kirkland. Chair feels the ordinances make sense given all of the circumstances.

Ms. Cox encouraged Commission to look at www.tentcitysolutions.com, sponsored by the group opposing Tent City, so that the Commission understands what may be coming in the public hearing.

6. **UNFINISHED BUSINESS**
   None.

7. **NEW BUSINESS**
   None.

8. READING AND/OR APPROVAL OF MINUTES:
None.

9. TASK FORCE REPORTS
There was a report on the APA Conference. Chair mentioned that Mr. Shields was commended as co-chair of that Conference.

10. ADMINISTRATIVE REPORTS

A. City Council Actions
NE 85th Study Session
Tree and Landscaping Regulations
Mr. Stewart reported that a Staff presentation was made to City Council at their study session on NE 85th regarding the two non-conforming issues of the auto services centers there. Staff will go back to Council November 28 for further discussion. There was a lot of discussion about relaxing the buffer and height limits of 15'.

Also, City Council adopted the new tree and landscapting regulation. Interim regulations will be extended to January 1st so that time is sufficient to produce educational materials.

B. Thanks to Mr. Hodgson
Commission thanked Mr. Hodgson for his service to the Commission and wished him well as he takes his seat on City Council. He responded by saying that his time on the Commission was extremely productive and he was proud to have been a part of this body.

C. Public Meeting Calendar Update
Commissioners were reminded that the dinner is December 6 and the next meeting date is December 15. The retreat is in January.

11. COMMENTS FROM THE AUDIENCE
None.

12. ADJOURNMENT 10:40 p.m.

_____
Chair
Kirkland Planning Commission

_____
Planning Staff
Department of Planning and Community Development