



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: September 13, 2005
Subject: TOTEM LAKE MALL – MEMORANDUM OF UNDERSTANDING

RECOMMENDATION

Review and authorize the City Manager to sign the attached Memorandum of Understanding (MOU) submitted by Coventry II DDR Totem Lake LLC (Coventry/ DDR).

Alternatively, provide direction for staff to negotiate revisions with Coventry/ DDR and return for City Council approval on October 18, 2005.

BACKGROUND DISCUSSION

Purpose of the MOU The purpose of the MOU is to establish an agreement that sets forth the parameters for a more detailed development agreement to be prepared and presented for Council adoption later this year. The MOU establishes the City's commitment to contribute City funds toward the redevelopment of the Totem Lake Mall, the amount of money the City is willing to contribute, the purposes for which City money would be used and the commitment of Coventry/ DDR to build the Mall and associated public improvements. The proposed MOU is included as attachment 1.

DDR Proposal Coventry/DDR purchased the Totem Lake Mall in 2003. Following adoption of new zoning regulations for the Mall in 2004, Coventry/DDR prepared a conceptual plan for Mall redevelopment. The plan was presented to the City Council, Design Review Board and Totem Lake Action Team and received generally favorable feedback.

Redevelopment would occur in two phases. The first phase would involve partial redevelopment of the lower Mall. Phase two would totally redevelop the upper mall. Final development would result in 513,075 sq. ft. of retail space, 216 residential units, 144,000 sq. ft. of office space and a 13 screen theater.

In May of this year, Coventry/DDR met with the City Council, provided a status report of its redevelopment plans and requested that the City financially participate in redevelopment of the mall in order to make the project economically feasible. A \$15 million investment by the City was requested, with funds used for improvements to 120th Ave., purchase/ improvement of a new street with a public plaza, and waiver of development fees.

Since the May meeting, Coventry/ DDR has refined it's proposal for the use of City funds and has prepared the proposed MOU. As specified in the MOU, the primary City financial contribution would be for construction of and

purchase of right of way for a new east/ west street as well as for reconstruction and realignment of 120th Ave. NE. Payment for other public improvements is also provided for if needed to create a City investment of \$15 million.

Coventry/ DDR also recently submitted an application for Design Review Board approval of the Conceptual Master Plan for the Mall. The first DRB meeting to review the application was on September 12. A copy of the proposed Conceptual Master Plan is provided as attachment 2.

Financial Benefits to the City At the request of Coventry/ DDR, Mundy and Associates prepared a benefit-cost analysis of the proposed Totem Lake Mall redevelopment in April, 2005. The analysis showed that the City would receive approximately \$1.6 million annually in additional tax revenues from the redeveloped Mall. The analysis also estimated the annual debt service payments required for various levels of City financial contributions and calculated the net benefit to the City. A summary page from that report is provided as attachment 3.

Marilynne Beard, the City Finance Director, has reviewed the analysis and concluded that the Mundy and Associates' revenue estimates are reasonable. Further, if the City floats bonds to pay for a \$15 million financial contribution, the new revenue will be more than sufficient to pay the annual debt service. Fifty to sixty percent of the new revenue stream will cover debt service costs, leaving \$600,000 to \$750,000 as net new revenue for the City.

Limitation on Use of City Funds The City must be careful of taking any action that might be viewed as a give away or a loan of credit. The Washington Constitution contains two express provisions which prohibit gifts and loans of public funds to private entities: Article VIII, Section 5 forbids the lending of credit by the state; and Article VIII, Section 7 is a prohibition against the state, or any "county, city, town, or other municipal corporation" giving away or granting money. Although these provisions are worded differently, the Washington Supreme Court has held that they have identical meanings. Neither the state nor local governments may make gifts or loans of public funds or property, or lend their credit to private persons or entities except for the necessary support of the poor and infirm.

Consequently, in contributing City money to the Mall redevelopment project, the City must receive tangible benefits that have a value equal or greater than the cost to the City. For that reason, it is recommended that the City's financial contribution be focused on the purchase and development of City streets and plazas, as discussed further below.

Land Appraisal/ Construction Cost Estimate In order to determine the value of the public improvements to be purchased by the City, Coventry/ DDR will submit a detailed land appraisal and construction cost estimate. Prior to agreeing to purchase values, it will be important for the City to have an independent professional review the information submitted. The City has not received an appraisal or cost estimate at this time.

Design of Rights of Way/ Plaza In late August, Coventry/ DDR submitted an application to the Design Review Board for Conceptual Master Plan approval. The proposed plan orients the majority of tenant spaces toward two public rights of way: 120th Ave. NE and a new east/ west street and plaza that would run perpendicular to 120th. 120th Ave. NE would be completely redeveloped to widen sidewalks and provide on-street parking. The new east/ west street has two parallel one way streets separated by a 40 foot wide plaza, with wide side walks on each side and four lanes of on-street parallel parking. The conceptual site plan submitted to the Design Review Board is shown on attachment 2. The Board reviewed and conducted a public hearing on the proposal on September 12.

Since Coventry/ DDR is proposing that the City purchase and pay for the cost of improving the two rights of way, it is important to assure that the design of the streets maximize public benefit. To obtain expert opinions on this matter, staff contracted with three nationally prominent design and real estate professionals: Mark Hinshaw, Director of Urban Design with LMN Architects in Seattle, J. Douglas Macy, Principal with Walker Macy, a landscape architecture

and urban design firm located in Portland, and Marilee A. Utter, President of Citiventure Associates, a real estate consulting firm located in Denver. The three of them spent the morning of August 17 reviewing the Mall plans and visiting the site. In the afternoon, Mall architects from the Fuller Sears architects joined us for a discussion of the design.

Following the meeting, Mark Hinshaw submitted a report summarizing their recommendations. A copy of the report is included as attachment 4. To summarize, Hinshaw, Macy and Utter concluded that the width and design of the proposed new east/west street separates retail spaces on each side too much and diminishes its function as a pedestrian oriented retail street. At the same time, the width of the plaza is too narrow to serve as an active public space. They recommended narrowing the street at least at some points and emphasizing the quality of the sidewalk space abutting the shops. Similarly, on 120th, they recommended emphasizing the sidewalk environment, widening the street if necessary to ensure that sidewalks are 15 feet wide. Other ideas presented by Hinshaw, Walker and Macy include:

- Provide high quality street fixtures and furnishings;
- Complete the street grid by dedicating and developing a new street along the front of the shops facing the surface parking lot on the west side of the mall;
- Build a strong pedestrian connection from the mall up the hill to the hospital and transit center along 120th Ave. NE; and
- Include as much residential development in the mall as possible. (It isn't stated in their memo, but they did say during their visit that residential supports retail to a much greater extent than office development.)

In response to the recommendations of Hinshaw, Macy and Utter, Coventry/ DDR submitted a preliminary revised street design to the Design Review Board at the September 12 hearing. A copy of the revised design is shown in attachment 5. In summary, the revised plan narrows the new east/ west street from a width of approximately 150 feet to about 90 feet, except at the intersection with 120th Ave. NE, where it is wider. Other changes include: removal of the center plaza, reducing the number of travel lanes to one in each direction and replacing parallel parking with angle parking. The revised plan also increases the width of 120th Ave. NE, primarily by adding angle parking in place of parallel parking.

At their September 12 meeting, the Board discussed the pros and cons of the original and revised street designs. All Board members thought that the changes to 120th Ave. NE were good, but they were somewhat split on whether the original or revised plan for the new east/ west street would be preferable. Some Board members favored the revised plan because it has the potential to be a more pedestrian friendly shopping environment with better sidewalk oriented public spaces. Others favored the original design because the wider configuration provided more visibility from I-405 and greater openness between the new taller buildings that will line the street. In the end, the Board asked for a design that provides the best of both worlds, maintaining the basic configuration of the revised design, but widening it as necessary to avoid a canyon effect and preserve visibility from I-405. Representatives of Coventry/ DDR agreed to this approach. Further revisions will be explored and presented to the Design Review Board on October 3.

Council Direction on the MOU At the September 20 meeting, staff recommends that the City Council authorize the City Manager to sign the proposed Memorandum of Understanding. Staff and special legal counsel Rod Kaseguma have reviewed and negotiated changes to previous drafts of the MOU. If further changes are desired by the City Council, staff asks that the Council provide sufficient direction for staff to negotiate a revised MOU with Coventry/ DDR and bring it back for Council approval at the October 18 meeting.

Key points of the MOU are as follows:

- The City will contribute \$15 million for public improvements;

- The City will enter in to a development agreement that will establish the specific terms and conditions for approving mall redevelopment and the City's financial contribution;
- The City's financial contribution primarily will be for the following projects:
 - Purchase of right of way and construction of the new east/west street;
 - Reconstruction of 120th Ave. NE and purchase of any additional right of way necessary for such construction;
 - Payment for on or off-site traffic and infrastructure improvements; and
 - Acquisition of additional right of way (for example, the idea suggested by Hinshaw, Utter and Macy to dedicate street right of way along the west side of the current building in the lower mall).
- In the event that the cost for the above improvements does not equal \$15 million, the City will undertake one or more of the following items so that the City's total contribution equals \$15 million:
 - Adjustment of impact fees;
 - Adjustment of permit fees;
 - Reduction of utility connection charges; and
 - Potential other measures agreed to by both parties.
- The City's financial contribution is contingent upon:
 - City approval of a development agreement by December 13, 2005. The development agreement emphasizes that the City Council will have the authority to approve the design of public improvements and the appraised value of land purchased;
 - Approval of a conceptual Master Plan by the Design Review Board by December 13, 2005.

Attachments:

1. Proposed Memorandum of Understanding
2. Proposed Conceptual Master Plan submitted to the Design Review Board
3. Benefit-cost analysis summary
4. Memo from Mark Hinshaw
5. Preliminary revised street design

MEMORANDUM OF UNDERSTANDING

**THE CITY OF KIRKLAND AND COVENTRY II DDR TOTEM LAKE, LLC
REGARDING REDEVELOPMENT OF TOTEM LAKE MALL**

RECITALS

WHEREAS, Coventry II DDR Totem Lake, LLC (“Coventry/DDR”) is the owner of the Totem Lake Mall (the “Mall”), located on a 26-acre parcel in the City of Kirkland (the “City”); and

WHEREAS, Coventry/DDR plans to pursue redevelopment of the Mall in an economically feasible manner and at a scale commensurate with the level of public financial participation desired by the City; and

WHEREAS, the City views the Mall as a key component of its overall economic vitality and has targeted redevelopment as a primary goal, recognizing that redevelopment will result in generation of addition revenues to the City, and will provide the potential for creation of a community center with a defined sense of place in furtherance of the City’s planning goals and objectives; and

WHEREAS, the City and Coventry/DDR have engaged in discussions to determine the appropriate level of public financial participation commensurate with the scale of redevelopment desired by the City, balancing the need for economic feasibility with the requirement that the City obtain real value for any public financial participation; and

WHEREAS, the City and Coventry/DDR have reached agreement that the appropriate level of public financial participation associated with redevelopment of the Mall generally in accordance with the Totem Lake Mall Conceptual Master Plan, as may be amended or modified from time-to-time (“Master Plan”) should include the items set forth in Article V herein, estimated to have a value of at least \$15,000,000.00 (“City Financial Participation”); and

WHEREAS, a Benefit Cost Analysis, prepared for Coventry/DDR and delivered to the City, forecast that redevelopment of the Mall will result in additional one-time construction related revenues and recurring annual revenues, which will be sufficient to fund all, or part, of the City Financial Participation; and

WHEREAS, The City is willing to invest the City Financial Participation in exchange for redevelopment of the Mall as approved in the Master Plan based upon its conclusion that the City Financial Participation is in the best interests of the citizens of the City; and

WHEREAS, the City and Coventry/DDR desire to enter into this Memorandum of Understanding (“MOU”) to address City Financial Participation and other aspects associated with redevelopment of the Mall; and

WHEREAS, this MOU sets forth commitments of the Parties, and forms the basis in which the Parties will negotiate in good faith with the intention of entering into a future Development Agreement that will incorporate the items set forth in this MOU (“Development Agreement”).

NOW, THEREFORE, the City and Coventry/DDR have agreed as follows:

ARTICLE I. PURPOSE AND INTENT

The purpose and intent of this MOU is to address City Financial Participation and other aspects of the contemplated Mall redevelopment generally in accordance with the Master Plan. It is the intent of the Parties that this MOU constitute the only legislative act necessary to establish the policy for the City on these matters, and provide the ways and means for the implementation of that policy by administrative and non-legislative acts as may be necessary and appropriate to carry out the purpose and intent provided herein.

It is the further intent of the Parties that this MOU (1) not provide for entitlements in land or development, such entitlements being the subject of other actions by the City or of permits to be sought at later times; and (2) not eliminate the need for a formal Development Agreement which will be negotiated and presented to the City Council for consideration at a later date. The Parties intend that the planning and redevelopment of the Mall be a cooperative, mutual endeavor in which the Parties actively participate and work together, in good faith and with due diligence.

ARTICLE II. DEFINITIONS

1.1 “Benefit Cost Analysis” means the calculation of estimated one time and recurring revenues generated by the proposed redevelopment of the Mall generally in accordance with the Master Plan.

1.2 “City” means the City of Kirkland, Washington.

1.3 “City Council” means the City Council of Kirkland, Washington.

1.4 “City Financial Participation” means the City investment in redevelopment of the Totem Lake Mall.

1.5 “Coventry/DDR” means Coventry II DDR Totem Lake, LLC, a Delaware limited liability company.

1.6 “Design Guidelines” means the Design Guidelines for Pedestrian-Oriented Business Districts, KMC 3.30.040.

1.7 “Design Review Board” or “DRB” means the Design Review Board of the City of Kirkland.

1.8 “Development Agreement” means an agreement between the City and Coventry/DDR regarding the redevelopment of Totem Lake Mall.

1.9 “Development Regulations” means those portions of the Kirkland Municipal Code and Kirkland Zoning Code pertaining to zoning, land use, design, design guidelines, building, construction, landscape, signage, parking, permitting, planning and other elements that govern real estate development within the Totem Lake TL2 Zone.

1.10 “Force Majeure Event” means any of the following events which prevent a Party from performing any obligation under this MOU: any act of God, strike, lockout or other industrial disturbance during the redevelopment of the Mall; act of public enemy, war insurrection, civil disturbance, explosion or riot; epidemic, landslide, earthquake, fire or flood; title dispute, or other litigation; governmental restraint, action or inaction; and failure to obtain any necessary federal, state, county or city governmental approval.

1.11 “Franchise Utilities” means electricity, natural gas, telecommunications, and other utilities not provided by the City of Kirkland.

1.12 “Infrastructure” means roads, streets, curbs, sidewalks, other public facilities and public utilities related to redevelopment of the Totem Lake Mall.

1.13 “Intersections” means the general areas where two or more streets or roadways join or cross, including the streets or roadways, infrastructure therein, and traffic signalization and other traffic control mechanisms within them.

1.14 “Kirkland Comprehensive Plan” means the Comprehensive Plan adopted by the City of Kirkland existing on the date of this MOU.

1.15 “KMC” means the City of Kirkland Municipal Code.

1.16 “Land Use Policies and Regulations” mean the Kirkland Comprehensive Plan, the Totem Lake Neighborhood Plan, the Design Guidelines and the Development Regulations.

1.17 “Mall” means the Totem Lake Mall.

1.18 "Master Plan" means the Conceptual Master Plan that will be approved by the Design Review Board.

1.19 "Memorandum of Understanding" or "MOU" means this document between the City of Kirkland and Coventry II DDR Totem Lake, LLC.

1.20 "Parties" means the City of Kirkland and Coventry II DDR Totem Lake, LLC, their successors and assigns.

1.21 "Public Plaza" means the right-of-way and improvements comprising an integral part of the redevelopment of Totem Lake Mall to be conveyed to the City.

1.22 "SEPA" shall mean the State Environmental Policy Act.

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

1.24 "Totem Lake Mall Boulevard" means that portion of Totem Lake Mall Boulevard adjacent to and adjoining the Mall, and includes the intersections adjacent thereto.

1.25 "Utilities" means both City 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 Totem Lake Mall.

1.26 "Vesting Period" means the time during which the Mall redevelopment shall be vested to the Land Use Policies and Regulations.

1.27 "120th Avenue NE" means that portion of 120th Avenue NE from, and including, the intersection of 128th Avenue NE to, and including, and the intersection of Totem Lake Boulevard.

ARTICLE III. REGULATORY FRAMEWORK

3.1 **Master Plan.** One of the key components governing redevelopment of the Mall will be the Master Plan. The City will evaluate all subsequent development applications within the Mall based on consistency with the Master Plan. The City Design Review Board ("DRB") shall establish the process and procedures for any future changes or amendments to the Master Plan. The Master Plan provides for, among other things, substantial demolition of existing buildings, new construction of buildings, parking structures and a public plaza, and realignment of 120th Avenue NE. The redevelopment will occur in two primary phases over a period of approximately three years, with completion anticipated, but not assured, in 2008. The redevelopment plan and

phasing will be more fully set forth in the Master Plan. The Parties shall work cooperatively and use their best, good faith efforts to accomplish the Mall redevelopment within this timeframe.

3.2 Development Agreement. Another key component governing redevelopment of the Mall will be the Development Agreement, which will incorporate the items set forth in this MOU. The Parties will enter into the Development Agreement pursuant to the authority of RCW 36.70B.170 through .210, under which a local government may enter into a development agreement with an entity having ownership or control of real property within its jurisdiction. The Parties shall work cooperatively and use their best, good faith efforts to complete negotiations and obtain final approval of the Development Agreement no later than December 13, 2005.

3.3 Inconsistencies between Master Plan and Development Agreement. In the event of any inconsistency between the Master Plan and the Development Agreement, the terms of the Development Agreement shall control.

3.4 Vesting. The Development Agreement shall establish a vesting period ("Vesting Period"). Upon execution of the Development Agreement, and subject to any exceptions set forth in the Development Agreement, the Mall redevelopment shall be vested to the Land Use Policies and Regulations existing as of the date of the Development Agreement for the duration of the Vesting Period. Should the City amend any of the foregoing Land Use Policies and Regulations, or adopt new Land Use Policies and Regulations, then Coventry/DDR may elect to have such amended or newly adopted Land Use Policies and Regulations apply to the Mall redevelopment.

3.5 SEPA. The Development Agreement shall contain provisions to designate that it constitutes the "SEPA Decision" document and, as such, it shall establish all SEPA-based conditions necessary to mitigate potential adverse environmental impacts associated with redevelopment of the Mall generally in accordance with the Master Plan.

ARTICLE IV. MALL REDEVELOPMENT

4.1 Development Costs. Except for the City Financial Participation, Coventry/DDR shall be responsible for funding the redevelopment cost of the Mall with available resources and these costs shall not be an obligation of the City.

4.2 Planning and Design Responsibilities. Coventry/DDR, and its agents, shall be solely responsible for all design, plans, construction drawings and other documents associated with redevelopment of the Mall in accordance with the Master Plan and Development Agreement, including the selection of architects, engineers, and other professional consultants. With regard to design

work associated with 120th Avenue NE and the public plaza, the Development Agreement shall address any progress reporting and budget evaluation between the City and Coventry/DDR, because these components are included in the City Financial Participation as more fully set forth in Section 5.1 below.

4.3 Demolition and Construction Responsibilities. Coventry/DDR, and its agents, shall be solely responsible for all permitting, demolition and construction work associated with redevelopment of the Mall in accordance with the Master Plan and Development Agreement, including selection of all architects, engineers, other professional consultants, contractors, subcontractors and project/construction managers. With regard to construction work associated with realignment of 120th Avenue NE and/or the public plaza, the Development Agreement shall address progress reporting and budget evaluation between the City and Coventry/DDR, because the components are included in the City Financial Participation as more fully set forth in Section 5.1 below.

4.4 Transportation Infrastructure Required to Support Redevelopment.

4.4.1 Off-Site Transportation, Intersection and Gateway Infrastructure and Improvements. The City represents and confirms that Coventry/DDR shall not be required to construct or fund any off-site transportation, intersection or gateway improvements associated with redevelopment of the Mall (except road impact fees), including, but not limited to, streets, boulevards, intersections, traffic signalization, monuments, artwork, sculptures or signage. To the extent that any off-site transportation, intersection or gateway infrastructure or improvements are necessary on 120th Avenue NE, Totem Lake Way or Totem Lake Mall Boulevard, the City shall solely be responsible for all costs and expenses associated therewith as a component of the City Financial Participation.

4.4.2 On-Site Transportation and Intersection Improvements. To the extent that any on-site transportation and/or intersection improvements are deemed necessary or advisable including, but not limited to, street improvements, turn lanes, curbs, utilities, traffic signalization and/or signage, the City shall be solely responsible for all costs and expenses associated therewith as a component of the City Financial Participation.

4.4.3 Dedication of Rights of Way.

4.4.3.1 120th Avenue NE Realignment. To facilitate realignment of 120th Avenue NE, and upon approval of the design plans by the City and Coventry/DDR, Coventry/DDR shall dedicate the necessary right of way. Simultaneously with the dedication, the City shall vacate any portion of the existing 120th Avenue NE located on or adjacent to the Mall in excess of that which is necessary for alignment. In the event that there is a net increase in the

land dedicated for realignment, the City shall pay to Coventry/DDR the fair market value of the net increase as a component of City Financial Participation. The Development Agreement shall set forth the terms governing any potential dedication and purchase of additional right of way for realignment of 120th Avenue NE, including, but not limited to the appraisal process for determining the fair market value of any additional land dedicated.

4.4.3.2 Additional Rights of Way Dedication. In the event that the City and Coventry/DDR mutually agree upon the need for additional rights of way internal to the Mall, such as periphery streets, then Coventry/DDR shall dedicate the necessary rights of way. The City shall pay to Coventry/DDR the fair market value of the additional dedicated land as a component of the City Financial Participation. The Development Agreement shall set forth the terms governing any potential dedication and purchase of additional rights of way.

4.4.4 Transportation Mitigation Fees. As a component of the City Financial Participation, the City shall have the authority to reduce or eliminate all, or some of, the cost of any and all on-site or off-site transportation mitigation (impact) fees, park mitigation fees, or similar fees in conjunction with redevelopment of the Mall.

4.5 Utility Infrastructure Required to Support Redevelopment.

4.5.1 Utility Infrastructure Capacity. The City will assist Coventry/DDR with coordination of sewer and water utility infrastructure issues with Northshore Utility District. The Parties believe that there is adequate off-site water and sewer system infrastructure and capacity in place to accommodate redevelopment of the Mall in accordance with the Master Plan. However, additional review and evaluation will be necessary.

4.5.2 Stormwater Conveyance System Infrastructure and Capacity. The City represents that there is an adequate off-site stormwater conveyance system, including capacity and infrastructure, to serve the Mall redevelopment. To the extent that any off-site stormwater conveyance system improvements are necessary in conjunction with the Mall redevelopment, the City shall solely be responsible for all costs and expenses associated therewith as a component of the City Financial Participation. The Development Agreement shall address all pertinent on-site stormwater conveyance system issues including, but not limited to, stormwater detention, water quality treatment, and establishment of a mutually acceptable utility plan to coordinate tie-in of off-site and on-site stormwater conveyance infrastructure.

4.5.3 Other Franchise Utilities. The City will assist Coventry/DDR with coordination of Franchise Utilities with the purveyor thereof.

4.6 Development and Construction Timing and Schedule. Coventry/DDR contemplates that the Mall redevelopment will be accomplished in two primary phases between 2006 and 2008. The Development Agreement shall include the anticipated timing and scheduling of any necessary off-site improvements, including realignment of 120th Avenue NE, to ensure that the City can accommodate the timing without delay of the development plans. Both Parties will use their best efforts to meet the timing and scheduling set forth in the Development Agreement.

ARTICLE V. CITY FINANCIAL PARTICIPATION

Subject to the other provisions of this MOU, the City shall bear the sole cost and expense associated with the primary City Financial Participation set forth in Section 5.1 below. In the event that the primary City Financial Participation does not amount to \$15,000,000, then the balance shall be paid using the secondary City Financial Participation set forth in Section 5.2 below. Funding of the City Financial Participation shall be based upon financing of the City's choice (e.g., general funds, revenue bonds, capital facilities reserves, or some combination thereof). The City shall determine in its sole discretion the sources of revenue to support its investment. The City's Benefit Cost Analysis relies on forecasted revenues from sales tax on construction, increased sales tax revenues from redevelopment of the Mall, and increased property taxes and other revenues generated by the Mall after redevelopment to fund all, or a portion of, the City Financial Participation.

5.1 Primary City Financial Participation. The City shall provide the following City Financial Participation:

5.1.1 Public Plaza Acquisition. The City shall purchase the public plaza upon completion of construction. The public plaza will consist of approximately 2.27 acres and will include public right of ways with parking adjacent thereto, public amenities, sidewalks and possibly a landscaped boulevard area. The purchase price shall be established in the Development Agreement and shall be based upon an appraisal satisfactory to both Parties. The final design concept and materials specification associated with the public plaza shall be addressed in the Development Agreement and shall be subject to the approval of both the City and Coventry/DDR. In addition, the Development Agreement shall include provisions addressing construction of the public plaza, progress reporting, uses and restrictions associated with the public plaza after acquisition, future maintenance, insurance, and the purchase and sale provisions.

5.1.2 Realignment of 120th Avenue NE. The City shall reimburse Coventry/DDR for the entire cost and expense associated with realignment of 120th Avenue NE, and the utilities located therein, whether governmental or Franchise Utilities. The costs shall include, but shall not be limited to, those

associated with design; permits and other governmental approvals; management and construction oversight; demolition, realignment and construction of streets, curbs, sidewalks, pedestrian crossings, utilities, signage, gateway features, traffic signalization and other traffic control mechanisms, landscaping, public amenities, and any other infrastructure or improvements to be located within the realigned 120th Avenue NE. The final design concept and materials specification associated with realignment of 120th Avenue NE shall be addressed in the Development Agreement and shall be subject to the approval of both the City and Coventry/DDR. In addition, the Development Agreement shall include provisions addressing realignment and construction of 120th Avenue NE, agreed upon infrastructure, public amenities, progress reporting, budget evaluation, scheduling, timing and reimbursement arrangements.

5.1.3 Transportation and Utility Infrastructure Costs. The City shall reimburse Coventry/DDR for the entire cost and expense associated with the following transportation and utility infrastructure:

5.1.3.1 Transportation and intersection infrastructure and gateway improvements (See Sections 4.4.1 and 4.4.2); and

5.1.3.2 Off-site stormwater drainage and collection system, including stormwater detention and water quality treatment improvements, if any, and any such on-site improvements that are agreed to by the parties in the Development Agreement. (See Section 4.5.2).

The Development Agreement shall include provisions for progress reports and budget evaluation between the City and Coventry/DDR with regard to any transportation and utility infrastructure costs incurred pursuant to this Section.

5.1.4 Dedicated Land. The City shall pay Coventry/DDR the fair market value of any net increase in land dedicated to the City as a result of realignment of 120th Avenue NE or dedication of additional land within the Mall in conjunction with redevelopment of the Mall. The Development Agreement shall include provisions addressing the timing and payment arrangements associated with any such dedication of additional land.

5.2 Secondary City Financial Participation. In the event that the primary City Financial Participation, as set forth in Section 5.1 herein, does not amount to the sum of \$15,000,000.00, then the City shall provide secondary City Financial Participation in an amount that will bring the total City Financial Participation to \$15,000,000.00. The City shall have the right to designate that the secondary Financial Participation be applied to one or more of the following:

5.2.1 Impact and Mitigation Fees. The City may provide all, or a portion of, the secondary City Financial Participation by reducing or eliminating

all, or a portion of, the transportation mitigation (impact) fees, park mitigation fees, or similar fees in conjunction with redevelopment of the Mall.

5.2.2 **Permit Fees.** The City may provide all, or a portion of, the secondary City Financial Participation by reducing or eliminating all, or a portion of, the costs associated with permit or similar fees in conjunction with redevelopment of the Mall.

5.2.3 **Connection Charges/City Utilities.** The City may provide all, or a portion of, the secondary City Financial Participation by reducing or eliminating all, or a portion of, connection and similar charges associated with City provided utilities.

5.3 **Alternative Secondary Financial Participation.** Nothing contained in this MOU shall preclude, or be deemed to preclude, the City and Coventry/DDR from agreeing upon alternative components of secondary City Financial Participation mutually acceptable to both Parties.

ARTICLE VI. EXPEDITED DEVELOPMENT PROCESSING

To the fullest extent permitted by law, the City shall expedite and give first-priority status to its processing of the land use, permit applications, construction drawings, plans and specifications, and all similar or related submissions by Coventry/DDR associated with the Mall redevelopment.

ARTICLE VII. CONDITIONS SUBSEQUENT

7.1 The respective obligations of the Parties as set forth in this MOU are contingent upon the following (unless waived by the Parties):

7.1.1 The ability of the Parties to negotiate a mutually acceptable Development Agreement no later than December 13, 2005; and

7.1.2 Master Plan approval, satisfactory to Coventry/DDR, no later than November 30, 2005.

ARTICLE VIII. MODIFICATIONS TO MOU

This MOU may not be modified or amended without the affirmative vote of a majority of the City Council and the concurrence of Coventry/DDR. Any modifications to this MOU must be in writing and signed by all Parties.

ARTICLE IX. BINDING EFFECT AND ENFORCEABILITY

Although the planning, design, and redevelopment of the Mall will be subject to the terms of the Master Plan and Development Agreement, which will

also encompass issues not addressed in this MOU, the Parties agree that the terms of this MOU will be incorporated into the Development Agreement. The Parties further acknowledge and agree that this MOU reflects the basic business deal between the Parties and is intended to be binding on the Parties.

ARTICLE X. FORCE MAJEURE

The Development Agreement shall include a provision that should any of the Parties be delayed in or prevented, in whole or in part, from performing any obligation or condition required by the Development Agreement by reason of a Force Majeure Event, that Party shall be excused from performing that obligation or condition for so long as the Party is delayed or prevented from performing, and for a period of thirty calendar days thereafter, and any affected deadlines shall be similarly extended.

ARTICLE XI. COUNTERPARTS

This MOU may be executed in any number of separate counterparts and by each of the Parties in separate counterparts, each counterpart constituting an original, and all such counterparts constituting but one and the same MOU.

ARTICLE XII. SUCCESSORS AND ASSIGNS

This MOU shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

ARTICLE XIII. GOVERNING LAW

This MOU shall be governed by and construed according to the laws of Washington.

IN WITNESS WHEREOF, the Parties have executed this MOU on or about the ___ day of September 2005.

COVENTRY II DDR TOTEM LAKE, LLC

By _____
Its _____

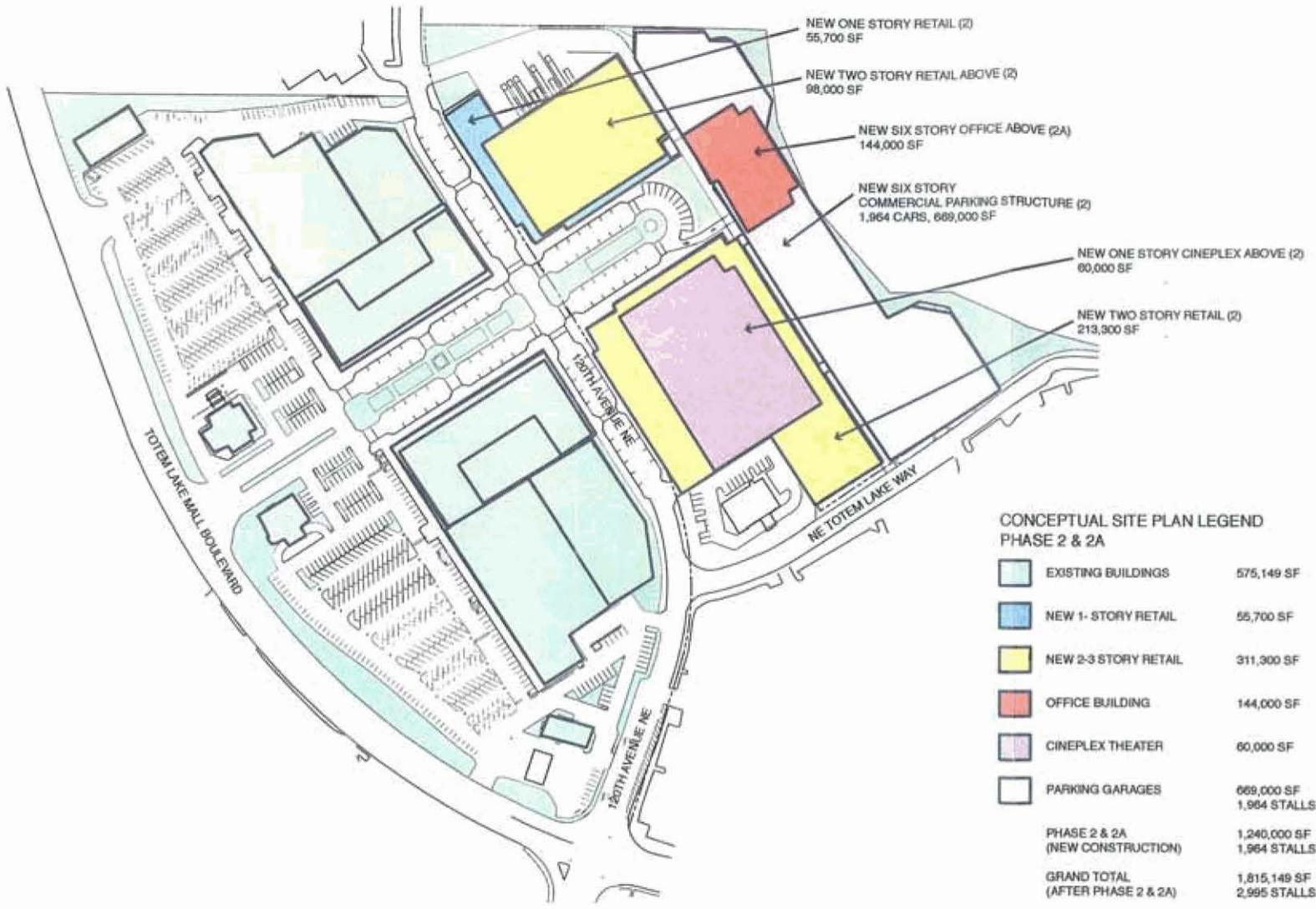
CITY OF KIRKLAND

By _____
Its City Manager

I HEREBY APPROVE the form and legality of the foregoing Memorandum of Understanding this ___ day of September 2005.

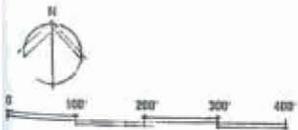
KIRKLAND SPECIAL LEGAL COUNSEL

By _____
Title _____



**CONCEPTUAL SITE PLAN LEGEND
PHASE 2 & 2A**

	EXISTING BUILDINGS	575,149 SF
	NEW 1- STORY RETAIL	55,700 SF
	NEW 2-3 STORY RETAIL	311,300 SF
	OFFICE BUILDING	144,000 SF
	CINEPLEX THEATER	60,000 SF
	PARKING GARAGES	669,000 SF 1,964 STALLS
	PHASE 2 & 2A (NEW CONSTRUCTION)	1,240,000 SF 1,964 STALLS
	GRAND TOTAL (AFTER PHASE 2 & 2A)	1,815,149 SF 2,965 STALLS



August 22, 2005

FULLER SEARS
ARCHITECTS

CONCEPTUAL SITE PLAN - PHASE 2 & 2A TOTEM LAKE MALL - CONCEPTUAL MASTER PLAN

ATTACHMENT # 2





Economic, Market
and Valuation Analysts

Table 42. Benefit-Cost Analysis

	←Lower Mall Construction→		←Upper Mall Construction→	
	2006	2007	Condominium Construction 2008	Office Construction 2009
Annual Taxes and Fees				
<i>Sales Tax</i>				
Current	\$593,297	\$614,181	\$635,800	\$658,180
Redeveloped			\$923,173	\$1,763,518
Difference			\$287,373	\$1,105,337
<i>Property Tax</i>				
Current	\$45,808	\$46,266	\$46,729	\$47,196
Redeveloped			\$195,000	\$232,700
Difference			\$148,271	\$185,504
<i>Admissions Tax</i>				
Current	\$27,648	\$28,621	\$29,629	\$30,672
Redeveloped			\$266,247	\$275,618
Difference			\$236,618	\$244,947
<i>Business Licensing Fees</i>				
Current	\$24,715	\$25,585	\$26,486	\$27,418
Expected			\$41,462	\$42,922
Difference			\$14,976	\$15,504
<i>Utilities Tax</i>				
Current	\$23,393	\$24,216	\$25,069	\$25,951
Expected			\$82,596	\$103,562
Difference			\$57,527	\$77,611
Total Annual Impact	\$0	\$0	\$744,765	\$1,628,902
One-Time Taxes and Fees				
<i>Real Estate Excise Tax</i>			\$208,800	\$104,400
<i>Building Permit Fees</i>	\$504,271	\$429,565	\$178,395	\$230,138
<i>Development Impact Fees*</i>	\$443,277	\$377,606	\$1,470,744	\$454,344
<i>Construction Sales Tax</i>	\$229,500	\$229,500	\$359,550	\$168,300
<i>New Construction Property Tax</i>		\$63,180	\$86,320	\$37,700
Total One-Time Impact	\$1,177,048	\$1,099,851	\$2,303,809	\$994,882
Total Impact	\$1,177,048	\$1,099,851	\$3,048,574	\$2,623,784
Annual Debt Payment (\$25 Mil)			(\$1,626,286)	(\$1,626,286)
Annual Debt Payment (\$20 Mil)			(\$1,301,029)	(\$1,301,029)
Annual Debt Payment (\$15 Mil)			(\$975,772)	(\$975,772)
Annual Difference (\$25 Mil)	\$1,072,194	\$1,010,531	\$1,422,288	\$997,498
Annual Difference (\$20 Mil)	\$1,072,194	\$1,010,531	\$1,747,546	\$1,322,756
Annual Difference (\$15 Mil)	\$1,072,194	\$1,010,531	\$2,072,803	\$1,648,013

*Includes Water and Sewer Fees
See Endnote 2

ATTACHMENT #3



MEMO

To: Eric Shields AICP
Director of Planning and Community Development

From: Mark Hinshaw FAIA FAICP
Director of Urban Design
LMN Architects

Subject: Totem Lake

Date: August 22, 2005

On Wednesday, August 17, you hosted a forum in which you sought advice from me, Doug Macy FASLA, principal of Walker/Macy Landscape Architects in Portland, and Marilee Utter of Citiventure Associates in Denver. I provided an overall urban design perspective. Doug brought his expertise and experience in designing great public spaces. Marilee offered commentary relating to urban development and the retro-fitting of older suburban malls. After much interactive discussion with you and the design team, we shared our observations and ideas on how to ensure that the City of Kirkland would be investing in a lively and gracious public space. Our remarks fall into six areas:

1. Modify the Boulevard Concept

We are very concerned about the dimension of the space in the center of the proposed boulevard. It is not wide enough to truly serve as an active green space or to accommodate gatherings. On the other hand, by separating the retail shops that face onto it by such a very large distance, the chances of the retail functioning well is decreased, due to less visibility and proximity. The success of this ground level retail component is very crucial.

We suggest a design that narrows this boulevard at some points to the dimension of a typical shopping street (approximately 80 feet) but widening it at other points to create more generous "village squares." This approach would compress the retail and focus it around more active spaces. One village square should be located in front of the proposed office building and between the two major retail anchors. The other should be at the intersection of the boulevard and 120th. And a third might be out toward the large parking lot on the west side. Each of these squares should be surrounded by retail uses. Some or all of them could contain dramatic water features.

ATTACHMENT 

The narrowed segment could perhaps be designed to feel like a shared space so that people and cars can mix freely. This might involve having no curbs, using a continuous paving pattern, bollards and other elements. It should be possible at times to close the central segment to traffic in order to allow for functions like seasonal events and a public market.

2. Make 120th a Great “Main Street”

The development plan indicates that numerous small shops would face onto 120th. We think this is a good idea but would suggest that 120th be re-designed to serve as the “main street” for Totem Lake. This would require that the sidewalks be widened to 15 feet to allow for a sufficient street tree planting zone, a sufficiently wide walking zone, and a storefront zone for tables and chairs. On-street parking must be allowed as shown and traffic should be calmed using various devices. (We would expect that some of the through-traffic would shift over to the road along the freeway.)

120th has the potential of being a great street that provides the district with a sense of focus. This would require that any parking structures abutting the street also contain some amount of street level retail, as well as architectural treatment. The intersection with the new proposed boulevard be treated in a special manner, because that is where we see the major “village square” being located.

3. Ensure High Quality Fixtures and Finishes

We believe that the City should not be as concerned about the quantity of public space but rather the *quality* of it. Often such spaces look good on a drawing but end up being austere and unused. The sidewalks and public spaces within this redevelopment should be of very high quality, with particular consideration to paving, unique lighting, seating, street furnishings and art. Rather than simply specifying generic fixtures from a catalog, the City should pursue having certain objects, such as the lighting, be unique to this district and serve as an identifying feature. The expected quantity would justify having them specially designed and fabricated.

Since the City of Kirkland is purchasing the land and funding the spaces, we believe that the City should take the lead in guiding the design, perhaps using their own design team who would be accountable to a City client group.

4. Complete the Grid

The introduction of the proposed boulevard is commendable in that it helps break up the massive super-blocks associated with the current shopping center. Having

multiple streets and smaller blocks allows for more choices of circulation, calms the traffic, and creates more exposure for retailers.

We believe that the grid could be further extended by converting the driving lane in front of the current buildings that face the freeway into a true street. It would be fitted with sidewalks and street trees. Over time, the other side of this street (that is, the parking lot) might be filled in with development. The City could participate in the conversion of the lane to a street by some combination of purchase and physical improvements.

5. Build a Connection Up the Hill

From what we can tell, little thought has been given to how to link the redevelopment of the site to the hospital and the future transit center. Public transportation plays a very important role in mixed-use development as it can serve employees and shoppers, as well as local residents. The connection shown in the plans for the medical office building and transit center is very weak. It is unclear, for example, how handicapped people would use the connection, which would require the use of the office elevators, when the buildings are closed.

We believe that there should be a major structure that allows for clear and easy vertical circulation up and down the hillside. It should be located along 120th so that it is highly visible. It could include ramps and stairs and possibly an elevator. It would intersect with the transit center at the level of the waiting platform – rather than a level beneath it. And it should be a landmark structure, incorporating lighting, planting and public art.

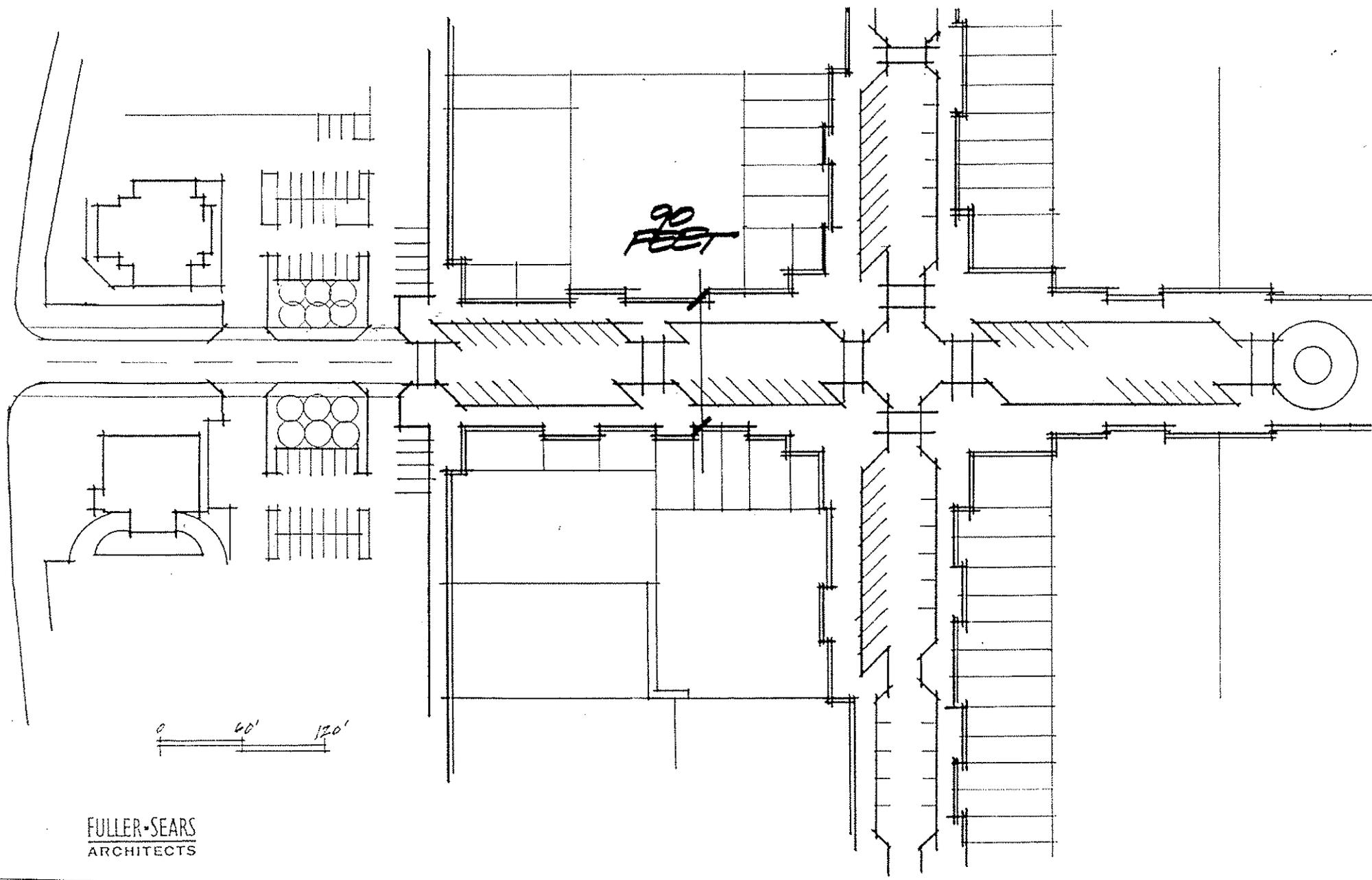
6. Design is Not the Only Issue

It is very challenging to make public spaces that are safe, attractive, active and well-used throughout the day and evening. While design is important, other factors are also critical to success. A number of active uses must abut, face onto the space. Storefront windows should be generous and allow for adjacent uses to “spill out” onto the space. So tenancies, their entrances, signs and other operating attributes are essential to get right. Furthermore, the space needs to be managed to ensure regular programming and cleaning and to oversee vending and security. If the City is to pay for and own the space, it must have a significant role in its on-going operation.

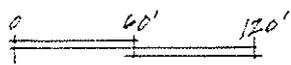
Furthermore, public spaces are most successful when there is a lot of density around them. This is confirmed by examples of similar spaces investigated by the design team. Virtually all of the spaces have a considerable amount of residential use in close proximity, if not right within the development.

We are concerned that the proposal does not include enough housing. Therefore we suggest that the number of units be increased. These could be added along 120th over parking structures. Such housing could consist of senior housing so that parking requirements are only minimally increased. Finally, any housing should be part of initial phase of development, not deferred until a later point in time.

We hope that these observations are useful in your deliberations. We would be glad to assist you in any further aspect of this endeavor and wish you well in the steps ahead.



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FEET



FULLER-SEARS
ARCHITECTS

ATTACHMENT #5

