

City of Kenmore



City of Kenmore - 18120 68th Avenue NE - PO Box 82607, Kenmore WA 98028 - Phone: 425-398-8900 - Fax: 425-481-3236

City of Kenmore
City Council Executive Session
6:00 p.m., Monday, January 24, 2011

Pursuant to Property Acquisition and Potential Litigation
RCW 42.30.110(1)(b) and RCW 42.30.110(1)(i)
Kenmore City Hall
18120 68th Ave. NE, Kenmore, WA 98028

City of Kenmore
City Council Town Hall Meeting
6:30 p.m. - 7:20 p.m., Monday, January 24, 2011

Kenmore City Hall
18120 68th Ave. NE, Kenmore, WA 98028

City of Kenmore
City Council Regular Meeting Agenda
7:30 p.m., Monday, January 24, 2011

Kenmore City Hall
18120 68th Ave. NE, Kenmore, WA 98028

AGENDA ITEMS ARE SUBJECT TO CHANGE up to and including the time of the meeting; items may be added or dropped. Please call the City Clerk if you have any questions or to confirm the agenda items prior to the meeting at (425) 398-8900, or stop by City Hall at 18120 68th Avenue NE, Kenmore. The agendas are also available on our website at: www.kenmorewa.gov. We are trying to make our public meetings accessible to all members of the public. If you require special accommodations, please call the City Clerk at least three (3) business days prior to the meeting.

- I. OPEN TOWN HALL MEETING 6:30 pm**
- II. CLOSE TOWN HALL MEETING 7:20 p.m.**
- III. CALL REGULAR MEETING TO ORDER**
- IV. ROLL CALL**

City Council Town Hall & Regular Meeting Agenda
January 24, 2011

V. FLAG SALUTE

VI. AGENDA APPROVAL

VII. CONSENT AGENDA

- A. Minutes of the November 9, 2010 Special Budget Workshop.
- B. Claim Nos. 23264 - 23320 in the Amount of \$796,130.78 for the period ending December 31, 2010.
- C. Accept November 2010 Financial Reports for the City of Kenmore - Joanne Gregory, Finance Director
- D. Authorize the City Manager to Execute Amendment No. 1 in the Amount of \$105,000 to Contract No. 09-C776 with Gray & Osborne, Inc. to Complete the Final Design of the 0057 Channel Relocation - Ron Loewen, City Engineer

VIII. CITIZEN COMMENTS

This is an opportunity to express your views on issues that are important to you and to the community. Please limit your comments to three (3) minutes.

IX. BUSINESS AGENDA

- A. RECP/UP Kenmore, LP Quarterly Report to the Council on the Kenmore Village Project - Fred Stouder, City Manager; RECP/UP Kenmore
- B. Authorize City Manager to Execute Contract No. 11-C906 for Jail Services with Snohomish County Jail. – Joanne Gregory, Finance Director and Cliff Sether, Kenmore Police Chief
- C. Discussion and Adoption of Ordinance No. 11-0320 Amending Section 9.50.030 of the Kenmore Municipal Code Relating to the Definition of the Crime of Prostitution, and Providing for an Effective Date - Fred Stouder City Manager and Cliff Sether, Kenmore Police Chief

X. COUNCIL COMMENTS/REPORTS

XI. ADJOURNMENT

XII. UPCOMING MEETING SCHEDULE:

City Council Town Hall & Regular Meeting Agenda
January 24, 2011

XII. UPCOMING MEETING SCHEDULE:

- A. February 14, 2011 Monday 7:00 p.m. Regular Council Meeting

DRAFT

City of Kenmore
City Council Special Regular Meeting
Study Session
Minutes
November 9, 2010

CALL MEETING TO ORDER - Mayor David Baker called the meeting to order at 6:00 p.m.

Councilmembers present: Mayor David Baker, and Councilmembers Bob Hensel, *John Hendrickson, Laurie Sperry, Allan Van Ness, and Glenn Rogers.

Councilmember excused: Deputy Mayor Milton Curtis

*Councilmember John Hendrickson arrived at 6:10 p.m.

Staff present: Fred Stouder, City Manager; Nancy Ousley, Assistant City Manager; Joanne Gregory, Finance Director; Ron Loewen, City Engineer; Jeff Durrant, Police Officer; and Lynn Suskin, City Clerk

BUSINESS AGENDA

Continued Discussion and Direction on the Proposed 2011/2012 Biennial Budget - Fred Stouder, City Manager and Joanne Gregory, Director of Finance, were present to continue the review of the proposed 2011-2012 Biennial Budget. They were also available to answer any questions.

Nancy Ousley, Assistant City Manager, was present to review the proposed human service funding for 2011/2012. She was also available to answer any questions.

Discussion on the Banner Bank Loan.

Councilmember Glenn Rogers moved to pay off the balance owing on the Banner Bank loan. Mayor David Baker seconded the motion. The motion passed unanimously.

ADJOURNMENT

Mayor David Baker adjourned the regular meeting at 6:15 p.m.

Mayor David Baker

ATTEST:

Lynn Suskin, City Clerk

City of Kenmore

Voucher Certification and Approval

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein and that the following claims, paid by checks 23264 - 23320 which total \$796,130.78 are just, due, and unpaid obligations against the City of Kenmore/King County/Washington, and that I am authorized to authenticate and certify to said claims.


 City Manager Date 1/14/11


 Finance Director Date 1/14/11

Check	Name	Description	Net amount
23264	NATIONAL LEAGUE OF CITIES	Conference Registration-Van Ness	\$ 295.00
23265	DURRANT, JEFF	ASAP Training Per Diem	322.00
23266	MINZGHOR, NICHOLAS	ASAP Training Per Diem	322.00
23267	WASHINGTON STATE DEPT OF REVENUE	Q2 - Q4 Leasehold Excise Tax	4,995.26
23268	UNITED STATES POSTMASTER	Kenmore Winter Newsletter Postage	1,336.35
23269	PUGET SOUND ENERGY	City Hall Electricity/Gas Bill	5,342.18
23270	OFFICE TEAM	Temp. Office Employee-10/22/10	679.60
23271	PUGET SOUND ENERGY	Electricity Bills	3,041.67
23272	BAKER, DAVID	Business Mtgs. & Conference Reimb.	510.75
23273	BRAVO ENVIRONMENTAL SERVICE	Dec. 2010 Drainage Services	25,512.10
23274	CATHOLIC COMMUNITY SERVICES	Q4 2010 Emergency Assistance Services	1,512.75
23275	CENTER FOR HUMAN SERVICES	Q4 2010 Northshore Family Center	8,240.00
23276	CITY OF LAKE FOREST PARK	Dec. 2010 Streets Contract & Training	62,274.87
23277	CITY OF RENTON	Nov. & Dec. 2010 Jail Housing	490.00
23278	COASTWIDE LABORATORIES	Facility Maintenance Supplies	428.34
23279	CONSEJO COUNSELING & REF	Q4 2010 Latina DV Advocacy Program	1,250.00
23280	CROWN PRODUCTS LLC	Parks Animal Waste Bags	546.59
23281	FRUHLING SAND & TOPSOIL	Flood Debris Dump Fees	228.95
23282	CALPORTLAND COMPANY	Flooding Repair ROW Materials	544.27
23283	HOME DEPOT	Park & Building Repair Supplies	123.26
23284	HOPELINK	Q4 2010 Human Services	13,382.75
23285	INSLEE, BEST, DOEZIE & RYDER, P.S.	Nov. 2010 Attorney Fees	13,729.50
23286	INSTITUTE FOR FAMILY DEVELOPMENT	Q4 2010 Parents & Children Together	3,938.00
23287	KCDA PURCHASING COOP	City Hall Maintenance Supplies	4,910.98
23288	KING COUNTY FINANCE	Nov. 2010 Street Sweeping & Contracts	66,896.72
23289	KING COUNTY FIRE DISTRICT	Building Permit Refunds	850.00
23290	KING COUNTY RADIO COMM SERVICES	Emergency Radios	7,698.46
23291	KING COUNTY SHERIFF	Nov & Dec 2010 Police Services Contract	465,735.70
23292	NATIONAL BARRICADE CO	Temporary Signage Rental	1,530.26
23293	NORTHSHORE SENIOR CENTER	Q4 2010 Sr. Center Transportation	250.00
23294	NORTHSHORE YOUTH & FAMILY SERVICES	Q4 2010 Family Counseling Services	10,000.00
23295	OFFICE TEAM	Temp. Office Employees	934.45
23296	PACIFIC TOPSOILS	Swamp Creek Park Mulch & Landscaping	2,122.59

VIIB. Claim Nos. 23264 - 23320 in the Amount of \$796,130.78 for the period ending December 31, 2010.

23297 PUGET SOUND ENERGY	Electricity Bills	4,682.05
23298 STAPLES ADVANTAGE	Misc. Office Supplies	1,163.33
23299 STEWART BEALL MACNICHOLS	Dec. 2010 Public Defender Services	3,300.00
23300 TOTAL LANDSCAPE CORP	Dec 2010 Parks & SR 522 Maintenance	6,864.11
23301 WASHINGTON STATE DEPT OF INFO SERV	Dec. 2010 List Serv	210.00
23302 WA STATE DEPT OF TRANSPORTATION	Nov. 2010 Signal Maintenance	160.77
23303 COLUMBIA RIDGE LANDFILL	Dec. Sweeper Truck Debris Dump	2,373.00
23304 WONDERLAND DEVELOPMENT	Q4 2010 Wonderland Development	2,832.50
23305 ROGERS, GLENN	NLC Conf. Meals & Transportation	182.94
23306 KONICA MINOLTA BUSINESS SOLUTIONS	Q4 2010 Photocopier & Usage	2,042.46
23307 NATIONAL ALLIANCE ON MENTAL ILLNESS	Q4 2010 Education, Support & Advocacy	1,081.50
23308 QUALITY BUSINESS SYSTEMS	Dec. 2010 Photocopier Usage	1,177.25
23309 BIS	City Hall WDCO Programming, Coding	1,850.00
23310 EVER-MARK, LLC	City of Kenmore Tote Bags	1,099.25
23311 SHATTUCK, NANCY	Dec. 2010 DV Advocacy	800.00
23312 HERO HOUSE	Q4 2010 HERO House	386.25
23313 GORDON THOMAS HONEYWELL	Dec. 2010 Government Affairs	3,139.63
23314 SARAH ROBERTS	Dec. 2010 Prosecution Services	9,000.00
23315 FRONTIER	Dec. 2010 City Hall Phone Services	754.63
23316 FAZZARI MARKETING	Personalized Kenmore Folders	1,411.18
23317 WASHINGTON ENERGY SERVICES	Mech. Permit Refund-2010-571	82.50
23318 THE PIN CENTER	City of Kenmore Logo Pins	920.00
23319 MILNE ELECTRIC, INC	City Hall Lighting Repairs	18,819.80
23320 WEINSTEIN AU	Oct, Nov, & Dec. 2010 City Hall	21,822.28
		<u>\$ 796,130.78</u>

PRIOR VENDOR ACTIVITY

	Previous YTD
AA PARTY RENTALS	\$ 379.96
ADT SECURITY SERVICES	265.88
AFLAC	1,823.90
ALCALDE & FAY	15,042.44
ALLIED WASTE SERVICES #172	1,422.09
AM TEST, INC	125.00
AMERICAN GENERAL	696.86
AMERICAN SOCIETY OF COMPOSERS	305.00
ANDERSON, LAURI	27.94
AURORA RENTS	215.47
AWC EMPLOYEE BENEFITS	61,226.24
BANK OF AMERICA 941	43,277.26
BANNER BANK CS	655.64
BANNER BANK JG	751.62
BANNER BANK JGORDON	1,407.47
BANNER BANK KENMORE	5,114.66
BANNER BANK LD	1,649.11
BANNER BANK NO	1,216.96
BEKINS NORTHWEST	303.45
BIS	350.00
BRAVO ENVIRONMENTAL SERVICE	9,472.80
CALIBRE HOMES, INC	7,500.00

VIIB. Claim Nos. 23264 - 23320 in the Amount of \$796,130.78 for the period ending December 31, 2010.

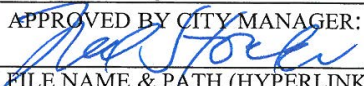
CALPORTLAND COMPANY	464.54
CARLSON, THOMAS G.	303.74
CASCADE PEST CONTROL	251.86
CEMEX	663.30
CITY OF KENMORE FS	425.79
CITY OF LAKE FOREST PARK	55,773.94
CITY OF RENTON	490.00
CLARITY SIGNS	338.36
COASTWIDE LABORATORIES	2,812.20
CODE 4 PUBLIC SAFETY EDUCATION	198.00
COLUMBIA RIDGE LANDFILL	1,919.60
COMCAST	219.80
COMMERCIAL SOUND, INC.	1,444.26
CORNERSTONE ROOFING	98.50
COSTCO RETAIL SERVICES	27.62
CROWN PRODUCTS	394.27
DANSOUND INC	657.00
DELL MARKETING L.P.	4,275.06
DEPARTMENT OF LABOR AND INDUSTRIES	3,975.31
DEPARTMENT OF RETIREMENT SYSTEMS	26,855.59
DIGITAL REPROGRAPHICS SERVICES INC.	117.83
DRS 457	4,161.48
EARTHCORPS	10,939.10
ESA ADOLFSON	3,806.84
EVANS, C. WILLIAM	5,247.00
FEDEX OFFICE	26.61
FERGUSON ENTERPRISES INC	5,220.33
FRONTIER	1,727.69
FRUHLING SAND & TOPSOIL	624.33
GEOENGINEERS INC	1,946.50
GORDON DERR	1,460.00
GORDON THOMAS HONEYWELL	6,121.37
GREGORY, JOANNE	153.93
H.W. LOCHNER, INC.	29,793.13
HAMMOND COLLIER WADE LIVINGSTONE	1,050.00
HDR	19,580.25
HEARTLAND	1,862.99
HEATERMEALS	1,193.21
HONEY BUCKET	125.00
ICMA RETIREMENT TRUST 457 - 304745	5,907.66
iCOMPASS TECHNOLOGIES, INC.	8,000.00
INSLEE, BEST, DOEZIE & RYDER, P.S.	29,129.73
INSTRUMENTATION NORTHWEST INC.	1,560.58
INTEGRA TELECOM	1,448.09
iWORQ SYSTEMS	3,800.00
J. MURPHEY CONSTRUCTION	42.67
JBS INSTRUMENTS	3,360.75
JET CITY PRINTING	49.27
JONES & STOKES	129.31
KCDA PURCHASING COOP	3,860.35
KELLY PRINTING & GRAPHICS	3,520.43

VIIB. Claim Nos. 23264 - 23320 in the Amount of \$796,130.78 for the period ending December 31, 2010.

KENYON DISEND, PLLC	4,148.20
KEY EQUIPMENT FINANCE	1,798.00
KING COUNTY W.L.R.D.	83,489.52
KING COUNTY ANIMAL SVCS	700.00
KING COUNTY FINANCE	79,701.15
KING COUNTY LIBRARY SYS	33,440.00
KING COUNTY PUBLIC DEFENSE	1,540.96
KING COUNTY RADIO COMM SERVICES	137.66
KING COUNTY RECORDER'S OFFICE	280.00
KING COUNTY SHERIFF	240,523.54
KUKER-RANKEN INC	59.59
LACHAPELLE, NATALIE	300.00
LIGHTHOUSE CONSULTING INC	4,323.34
LONGFELLOW, JONATHAN	420.00
LYONS, KEN	6,687.40
MAACO	368.96
MAIL FINANCE	501.52
MIDMOUNTAIN CONTRACTORS, INC	15,541.97
MR. T'S TROPHIES	660.29
NATIONAL BARRICADE CO	52.01
NATIONAL LEAGUE OF CITIES	2,065.00
NATIONAL LIFE OF VERMONT	878.73
NATIONWIDE 401a	27,654.01
NATIONWIDE RETIREMENT SOLUTIONS 457	4,710.00
NEXTEL COMMUNICATIONS	1,333.54
NORTHSHORE FIRE DEPT	1,020.00
NORTHSHORE UTILITY DIST	24,238.88
OAC SERVICES, INC	39,282.48
OFFICE DEPOT	817.83
OFFICE TEAM	3,185.63
OM WORKSPACE	744.43
OSTROM DRUGS	557.40
OTAK	73,806.21
OUSLEY, NANCY	661.50
PACE ENGINEERS, INC.	3,057.50
PACIFIC NW TITLE CO OF WA, INC	1,095.00
PASSPORT TRAVEL AND TOURS	625.80
PAWS	3,480.00
PEOPLES STORAGE	340.00
PETTY CASH CUSTODIAN	351.17
PHSI PURE WATER FINANCE	301.89
PUGET SOUND ENERGY	18,325.40
PUGET SOUND REFRIGERATION	735.84
PURE WATER TECH OF PUGET SOUND	136.88
QUALITY BUSINESS SYSTEMS	1,523.68
QUALITY BUSINESS SYSTEMS	1,275.86
SARAH ROBERTS	9,000.00
SEATTLE TIMES	1,324.78
SECRETARY OF STATE	55.00
SEMAHMOO RESORT	520.56
SHATTUCK, NANCY	800.00

VIIB. Claim Nos. 23264 - 23320 in the Amount of \$796,130.78 for the period ending December 31, 2010.

SHRED-IT	99.00
SOUND PUBLISHING, INC.	720.00
STAPLES ADVANTAGE	477.11
STEWART BEALL MACNICHOLS	6,000.00
STOUDER, FRED	1,091.76
SUBURBAN CITIES ASSOC	45.00
SUSSMAN/PREJZA & CO, INC	10,506.80
TELESYSTEMS WEST	257.33
TITAN OUTDOOR, LLC	862.00
TOTAL LANDSCAPE CORP	6,404.21
TOWNE CENTRE HARDWARE	25.79
T-TRAN LANDSCAPING & CONCRETE	8,760.00
UNITED WAY OF KING COUNTY	220.00
UNIVERSAL FIELD SERVICES	1,438.08
VAN NESS, ALLAN	171.40
WA GUARANTEED EDUCATION TUITION	830.00
WA STATE DEPARTMENT OF AGRICULTURE	33.00
WA STATE DEPT OF TRANSPORTATION	2,176.95
WASHINGTON STATE DEPT OF INFO SERV	420.00
WEINSTEIN AU	182.83
WONDERLAND DEVELOPMENT	2,832.50
YAKIMA COUNTY DEPT OF CORRECTIONS	42,221.84
	<u>\$ 1,195,139.63</u>

CITY OF KENMORE, WASHINGTON			
AGENDA BILL SUMMARY			
AGENDA TITLE			MEETING DATE
Accept November 2010 Financial Reports for the City of Kenmore, Washington			January 24, 2011
DEPARTMENT	DIRECTOR	CONTACT PERSON	PHONE
Finance	Joanne Gregory	Joanne Gregory	425-398-8900
COST OF PROPOSAL: N/A		ACCOUNT NUMBER: Various	
AMOUNT BUDGETED: 2009-2010 Amended City Budget \$80,765,626		NAME AND FUND #: All Funds	
ATTACHMENT(S) TO AGENDA PACKET ITEM:			
November 2010 Financial Reports for the City of Kenmore, Washington			
SUMMARY STATEMENT: The November monthly financial report is submitted for Council review and adoption. This provides the opportunity for the City Council and the community to receive information on the City of Kenmore's year to date revenues and expenditures in comparison to the City's 2009-2010 adopted biennial budget. It also provides an early opportunity to identify any potential variances or fluctuations from the adopted budget. Nationally, the unemployment rate rose to 9.8% in November from 9.6% in October. The Dow Jones closed at 11,006, down slightly from 11,109 in October. November 2010 is the 11th month of the second year of the two year biennium, and General Fund revenue sources (taxes) continue to track closely with the budget with the exception of development related revenues which are declining. On the positive side property taxes and sales taxes slightly exceeded the budgeted amounts. A budget amendment was presented and approved in November, 2010 and the November financial report reflects those adjustments. Overall sales tax revenues for the last 12 month period decreased .97%, (\$18,115), when compared to the previous 12 month period. When Brightwater construction sales tax revenues (which will not be ongoing) are not considered, these revenues are 2.17%, or \$34,296 more than the previous 12 month period. On a historical perspective, sales tax revenues (without Brightwater) were 2009: \$1,583,417; 2008: \$1,711,023; 2007: \$1,739,963. Real estate excise taxes are still below projections but not as dramatically as in 2009. For November, the total value of real estate transactions was \$7.2M which represents 22 transactions.			
CONSISTENT WITH OR COMPARISON TO PAST COUNCIL POLICIES, ORDINANCES, DIRECTION: Kenmore Budget Policy 9a: A revenue/expenditure report will be produced monthly so that it can be directly compared to the actual results of the fiscal year to date. Kenmore Budget Policy 9b: All budget amendments, both revenues and expenditures, will be noted in the monthly report.			
RECOMMENDED CITY COUNCIL ACTION/SUGGESTED MOTION: Accept November 2010 Financial Report for the City of Kenmore, Washington			
REVIEWED BY FINANCE DIRECTOR: JMG		REVIEWED BY CITY ATTORNEY:	APPROVED BY CITY MANAGER: 
TODAY'S DATE: January 6, 2011	REVISION DATE(S):		FILE NAME & PATH (HYPERLINK)

I:\Admin & Finance\Monthly Reports\2010\Nov AB Summary.docx



The City of Kenmore

6700 NE 181ST STREET PO Box 82607
KENMORE, WASHINGTON 98028

MEMORANDUM

TO: Frederick C. Stouder, City Manager
FROM: Joanne Gregory, Finance Director
DATE: January 6, 2011
RE: November 2010 Financial Reports for the City of Kenmore, Washington

November 2010 financial information is presented for your review and delivery to the City Council. Attached you will find the following reports:

- General Fund Summary
- General Fund Revenue Graphs
- General Fund Expenditure Graphs
- All Funds Cash Summary
- Other Funds Monthly Activity
- Cash and Investment Report
- Schedule of Investments
- Sales Tax Receipts by Business Type
- Retail Sales and Use Tax Distribution
- Real Estate Excise Tax Report
- Monthly Report for Kenmore Village
- SR 522 Phase I Revenue and Expenditure History
- SR 522 Phase II Revenue and Expenditure History

If you would like additional information or have any questions regarding the financial reports, please feel free to contact me.

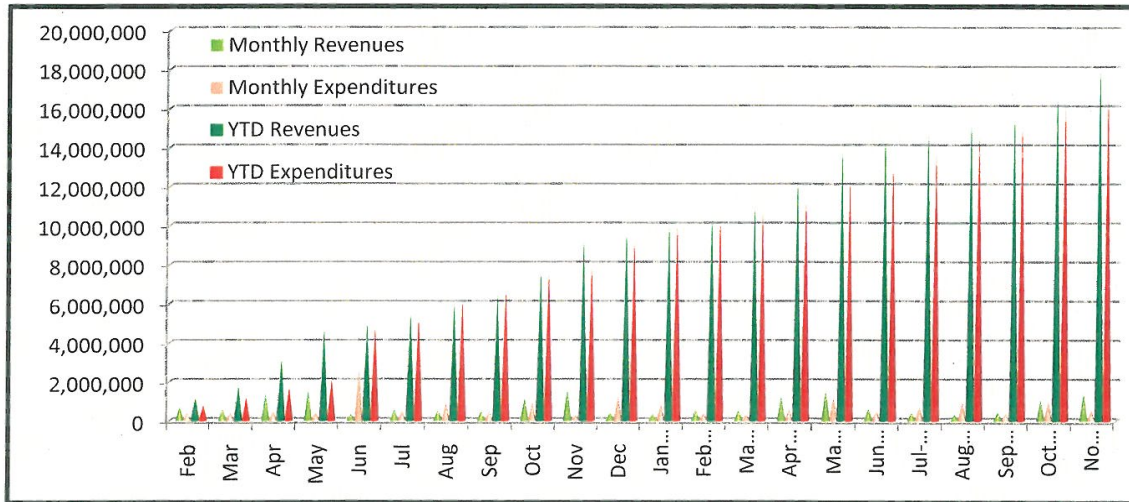
GENERAL FUND

The first section of the monthly financial report is a review of the General Fund. This fund accounts for operational activities and includes all financial resources except those required or elected to be accounted for in another fund. Revenues include various taxes, per capita distributions from the State, fines and forfeitures, permits and licenses, and fees for service.

In the context of the biennial budget, 95% of the biennial period had passed as of the end of November.

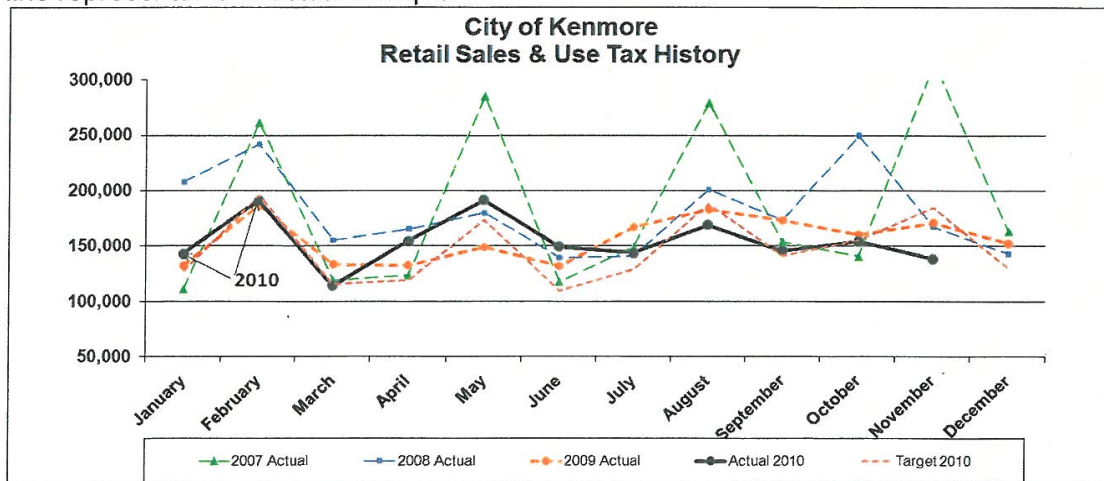
For the month of November, total revenues exceeded total expenditures in the General Fund by **\$852,285**. Biennium to date, total **revenues exceed expenditures** by **\$1,468,573**.

The following chart illustrates the revenue and expenditure activity as of November, 2010.

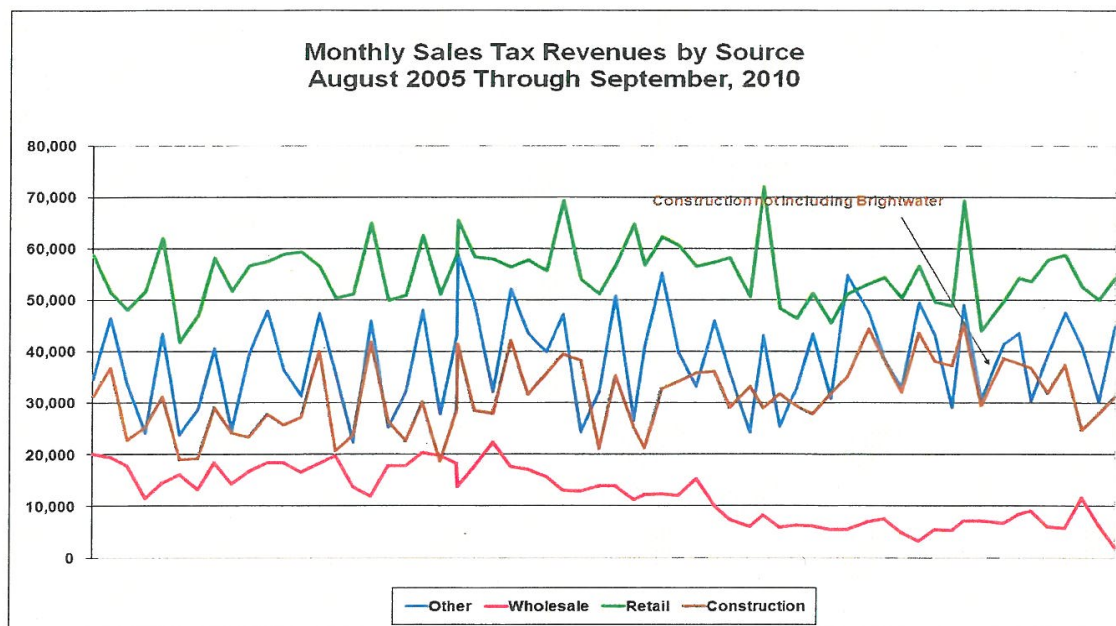


Total **revenues** for the month were **\$1,413,652** bringing biennium to date revenues to \$18,351,458 which is 96.8% of the biennial budgeted revenues of \$18,950,806. Primary sources of revenue for the month included property taxes of \$1,123,769 (received 101.5% of budget), retail sales and use taxes in the amount of \$138,651, and utility taxes in the amount of \$53,234.

A summary of sales tax revenues received in November is attached. These receipts are based on September sales activity. The chart below gives a historical perspective of monthly sales tax receipts over the last several years. The red target 2010 line is a monthly average of actual receipts by month during 2007, 2008, and 2009. The black line represents 2010 actual receipts.



The following chart illustrates the historical trends of sales tax receipts from these major segments: construction, retail, wholesale, other (agriculture, services, manufacturing, transportation and utilities) from August, 2005 through September, 2010. Construction sales taxes are shown without the benefit of the Brightwater construction project and are beginning to decline. This category had the benefit of the city hall, Bastyr dorms, and fire station construction projects which have been completed or are near completion. Other segments have not yet experienced significant, prolonged downturns; however wholesale related receipts have definitely fallen off and retail sales tax revenues are weak.



November 2010 expenditures were **\$561,367** bringing the biennium to date expenditures to \$16,882,885 which is 81.3% of the biennial budget expenditures of \$20,761,883.

The 2009-2010 biennial budget was based on a beginning fund balance of **\$3,683,966**. However, 2008 revenues were greater than projected which produced an actual 2009 beginning fund balance \$4,129,927. An additional year end adjustment to account for interest earnings on Certificates of Deposit resulted in a final, but unaudited, 2008 year end fund balance of **\$4,260,758**, which carries over as the 2009 beginning fund balance. Out of this balance, \$1,500,000 was loaned to the Street and Arterial Street Funds, as of December 31, 2008, resulting in an actual beginning **cash** balance of **\$2,760,758**. As a benchmark, the beginning fund balance of \$4,260,758, as compared to the budgeted

2009 expenditures of \$10,627,370, is a healthy reserve of 40%. \$1,363,597 of this reserve was included in the budgeted transfer to the Capital Projects Fund.

OTHER FUNDS

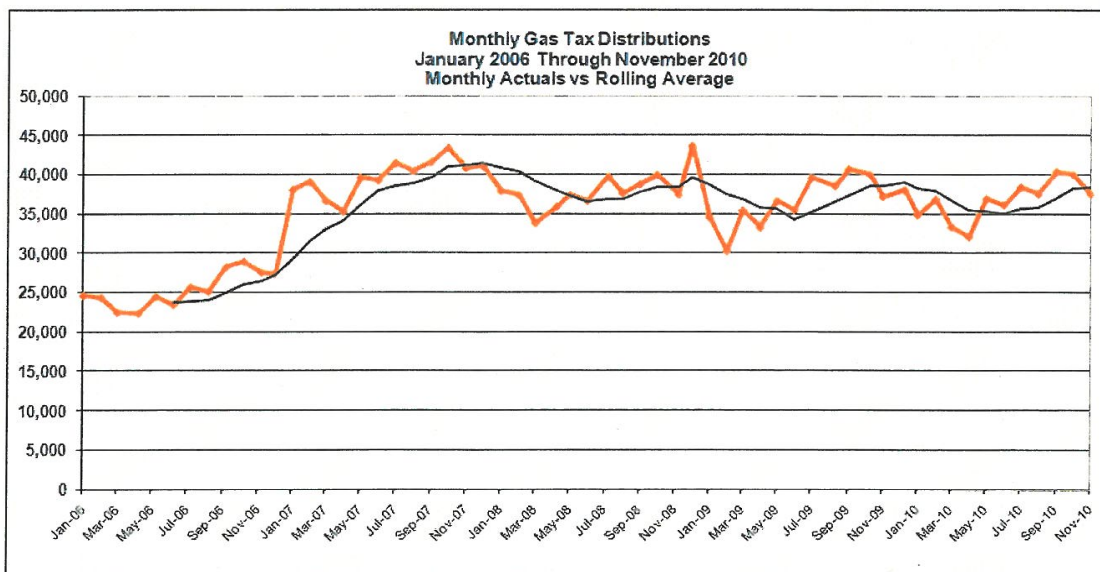
The November 2010 cash activity for all funds is presented on the attached All Funds Cash Summary. Total City cash and investments, at the end of November, totaled \$22,842,173. This balance does not include cash of \$443,378 held as retainage on the city hall construction project. The Other Funds Monthly Activity graphs compare biennium to date revenues and expenditures to the 2009-2010 biennial budget.

Other than the following, there were no significant transactions or unusual activities noted during the month of November.

In the **Arterial Street Fund**, there were no grant reimbursement revenues and \$1,402 was expended toward **SR522 Phase I**. \$31,475 was incurred for the NE 145th Street Signal Project. The Arterial Street Fund had a negative cash balance of (\$3,833,914) at month end.

In the **Street Fund** revenue from gas tax distributions was \$37,606.

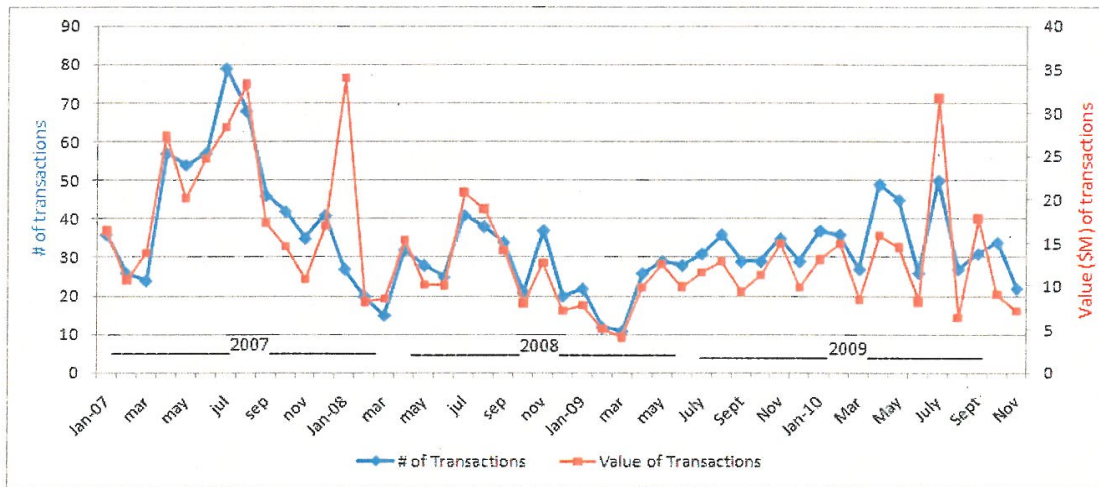
The following chart shows recent gas tax receipts through November, 2010.



Park impact fees of \$7,239 and **transportation impact fees** of \$24,066 were received in November. Biennium to date fees in these funds are: parks \$370,396, transportation \$1,242,644. Due to the slow pace of residential and commercial building activity earlier last year, the revenue budgets for both funds were reduced; however revenues are improving.

The **Municipal Capital Fund** received \$35,585 of real estate excise taxes (REET) in November from sales activity that occurred in October. 22 transactions were reported this month.

The attached Real Estate Excise Tax Report shows the monthly activity since 2007. Below is a chart that shows both the number of real estate transactions and the value of those transactions for the years 2007, 2008, 2009, through November 2010. It is evident that there are a stable number of monthly transactions but not at the peak level experienced in 2007.



There were no disbursements in this fund in November. The fund supports transportation and park capital projects. Real estate excise taxes received year to date are \$173,085 more than was received through November last year.

In the **Capital Projects Fund**, City Hall expenditures were \$40,854 bringing the biennium to date total project expenditures, including financing costs, to \$12,096,589.

SUMMARY

This concludes the financial report for the City of Kenmore as of **November 31, 2010**. Thank you for taking the time to review the materials. I appreciate your feedback and encourage you to contact me at 425-398-8900 if you have any questions prior to the City Council meeting.

**City of Kenmore, Washington
General Fund Summary Report
November 30, 2010**



2009-2010						
	<u>NOVEMBER</u>	<u>YEAR END 2009</u>	<u>November-2010</u>	<u>BIENNIUM TO DATE 2009-2010</u>	<u>% of BUDGET</u>	<u>BIENNIUM BUDGET 2009-2010</u>
REVENUES						
Beginning Fund Balance		2,748,258			74.6%	3,683,966
Property Taxes	1,152,412	3,949,177	1,123,769	7,991,271	101.5%	7,870,521
Sales and Use Taxes	207,609	2,278,780	174,209	4,333,361	96.6%	4,486,179
Utility Taxes	106,615	1,491,433	53,234	2,740,356	91.3%	3,001,932
Other Taxes	3,941	279,775	8,438	310,227	212.6%	145,900
Development Fees & Permits	99,560	901,980	22,403	1,374,847	76.2%	1,803,313
Franchise Fees	4,404	243,206	0	433,274	92.8%	466,900
Intergovernmental and Grants	7,657	436,267	20,073	832,017	109.4%	760,841
Investment Interest	8,622	99,675	11,123	116,510	64.7%	180,000
Fines and Forfeitures	0	54,723	0	41,101	n/a	0
Transfers and Other Revenues	1,680	32,706	403	178,492	75.9%	235,220
Total Revenues	1,592,500	9,767,721	1,413,652	18,351,458	96.8%	18,950,806
Interfund Loan Received		6,850,000		6,850,000	n/a	n/a
Total Revenues & Beginning Fund Balance		19,365,979		27,949,716		22,634,772

2009-2010						
	<u>NOVEMBER</u>	<u>YEAR END 2009</u>	<u>November-2010</u>	<u>BIENNIUM TO DATE 2009-2010</u>	<u>% of BUDGET</u>	<u>BIENNIUM BUDGET 2009-2010</u>
EXPENDITURES						
Cost Center						
City Council	9,589	92,767	5,923	213,816	116.0%	184,307
City Manager	53,147	783,292	50,324	1,596,507	101.3%	1,576,240
City Clerk	16,867	248,775	17,165	466,220	92.6%	503,323
Finance	17,014	244,729	17,464	472,080	97.4%	484,516
Legal	14,975	243,117	825	464,838	112.0%	415,000
Non-Departmental	49,460	856,806	40,557	1,665,178	93.8%	1,774,827
Interfund Transfers	0	1,371,095	0	1,371,095	41.6%	3,296,095
Public Safety	19,687	3,216,950	285,513	6,205,200	89.0%	6,969,090
Engineering	31,345	333,046	32,302	720,228	60.1%	1,197,788
Community Development	59,234	1,428,577	71,634	2,632,915	78.4%	3,358,755
Parks & Facility Maintenance	15,815	402,516	39,660	1,074,808	107.3%	1,001,942
Total Expenditures	287,133	9,221,670	561,367	16,882,885	81.3%	20,761,883
Interfund Loan Disbursed		5,350,000		5,350,000	n/a	n/a
Ending Fund Balance		4,794,309		5,716,831	305.2%	1,872,888
Total Expenditures and Ending Fund Balance		19,365,979		27,949,716		22,634,771

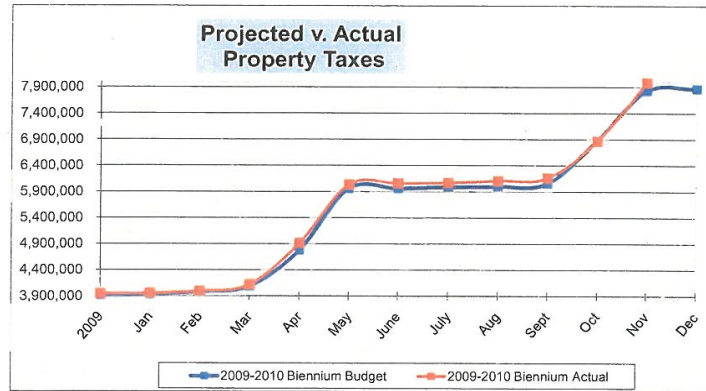
**City of Kenmore, Washington
General Fund Revenue Graphs
November 30, 2010**

PROPERTY TAXES

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	3,915,682	3,949,177
Jan	3,932,777	3,959,962
Feb	3,989,383	4,002,469
Mar	4,088,581	4,125,987
Apr	4,780,812	4,919,583
May	5,963,910	6,038,500
June	5,962,757	6,062,904
July	5,991,216	6,075,198
Aug	6,001,312	6,112,286
Sept	6,061,643	6,167,478
Oct	6,886,232	6,867,502
Nov	7,835,519	7,991,271
Dec	7,870,521	
2009-2010	7,870,521	

Biennium To Date
Actual v. Projected

102%

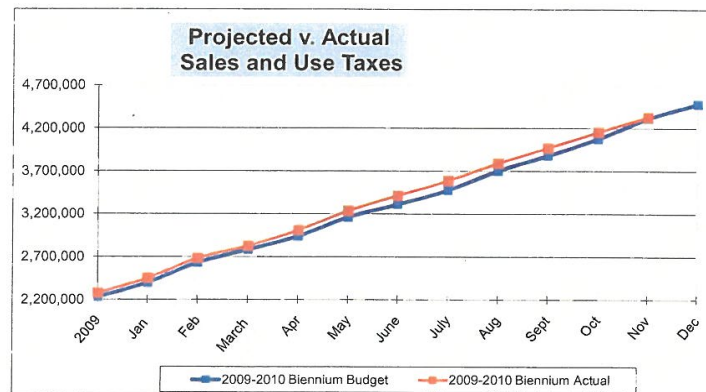


SALES, USE, CRIM JUSTICE TAXES

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	2,231,930	2,278,780
Jan	2,399,675	2,452,294
Feb	2,633,219	2,684,380
March	2,784,297	2,827,303
Apr	2,941,889	3,011,442
May	3,162,830	3,236,658
June	3,312,892	3,416,016
July	3,479,105	3,589,285
Aug	3,706,022	3,793,945
Sept	3,884,086	3,973,069
Oct	4,079,327	4,159,152
Nov	4,318,045	4,333,361
Dec	4,486,179	
2009-2010	4,486,179	

Biennium To Date
Actual v. Projected

100%

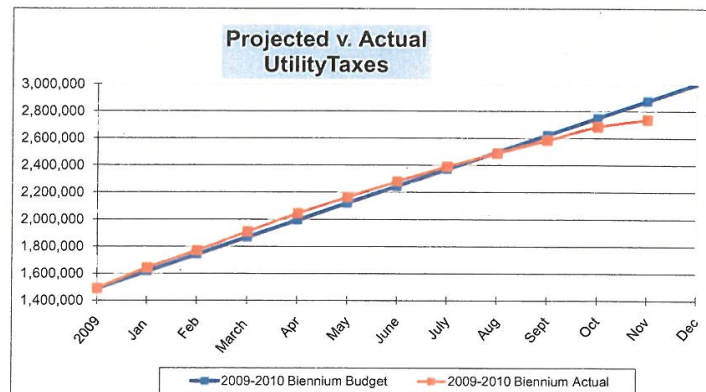


UTILITY TAXES

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	1,491,179	1,491,433
Jan	1,617,075	1,643,887
Feb	1,742,971	1,772,257
March	1,868,867	1,910,597
Apr	1,994,763	2,045,899
May	2,120,659	2,165,752
June	2,246,556	2,282,588
July	2,372,452	2,392,526
Aug	2,498,348	2,492,055
Sept	2,624,244	2,587,707
Oct	2,750,140	2,687,123
Nov	2,876,036	2,740,357
Dec	3,001,932	
2009-2010	3,001,932	

Biennium To Date
Actual v. Projected

95%

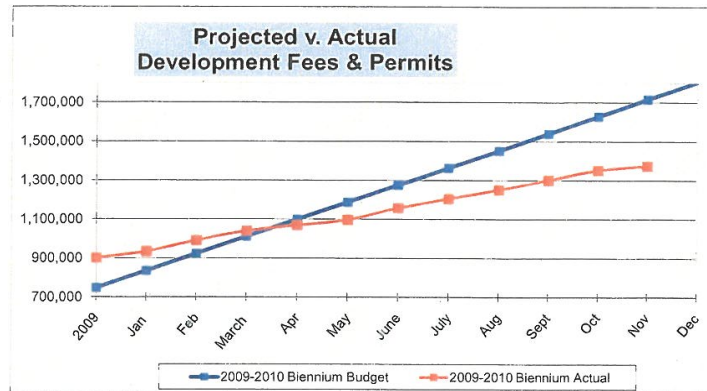


**City of Kenmore, Washington
General Fund Revenue Graphs
November 30, 2010**

DEVELOPMENT FEES & PERMITS

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	748,704	901,980
Jan	836,588	935,794
Feb	924,472	992,701
March	1,012,356	1,041,412
Apr	1,100,240	1,070,501
May	1,188,124	1,097,891
June	1,276,009	1,158,792
July	1,363,893	1,205,641
Aug	1,451,777	1,251,944
Sept	1,539,661	1,301,500
Oct	1,627,545	1,352,444
Nov	1,715,429	1,374,847
Dec	1,803,313	
2009-2010	1,803,313	

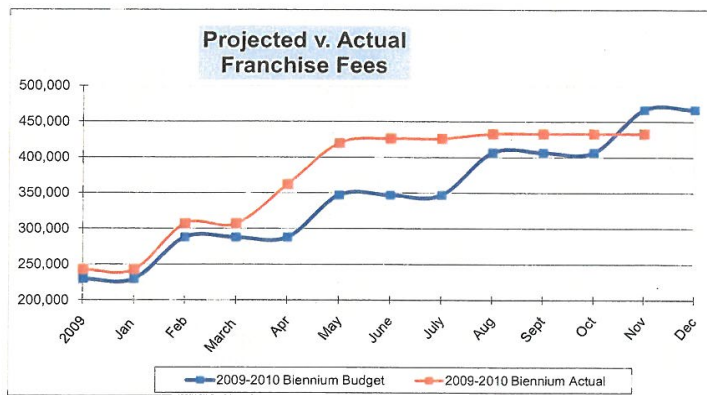
Biennium To Date
Actual v. Projected 80%



FRANCHISE FEES

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	230,000	243,206
Jan	230,000	243,206
Feb	288,182	307,302
March	288,182	307,302
Apr	288,182	362,392
May	347,334	420,231
June	347,334	426,382
July	347,334	426,382
Aug	406,843	433,274
Sept	406,843	433,274
Oct	406,843	433,274
Nov	466,900	433,274
Dec	466,900	
2009-2010	466,900	

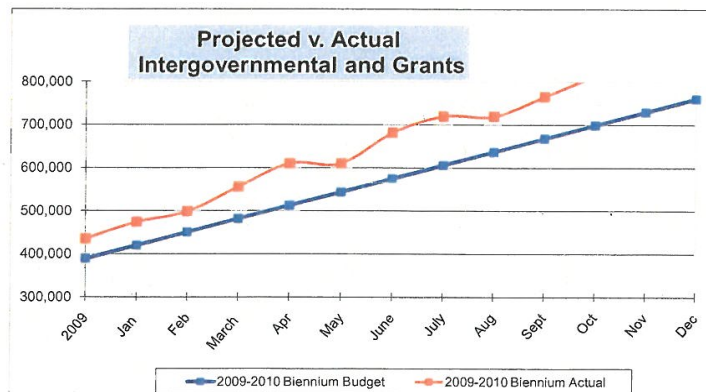
Biennium To Date
Actual v. Projected 93%



INTERGOVERNMENTAL & GRANTS

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	389,168	436,267
Jan	420,141	475,046
Feb	451,114	499,424
March	482,086	556,576
Apr	513,059	610,847
May	544,032	610,847
June	575,005	682,074
July	605,977	720,071
Aug	636,950	720,071
Sept	667,923	765,748
Oct	698,896	811,944
Nov	729,868	832,017
Dec	760,841	
2009-2010	760,841	

Biennium To Date
Actual v. Projected 114%



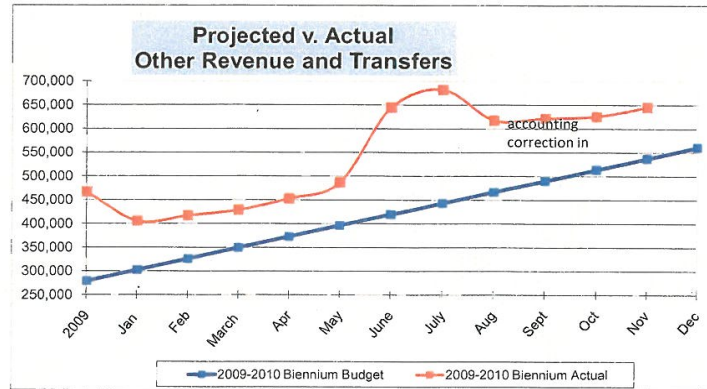
**City of Kenmore, Washington
General Fund Revenue Graphs
November 30, 2010**

OTHER REVENUES AND TRANSFERS

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	279,209	466,879
Jan	302,702	406,055
Feb	326,194	417,500
March	349,687	429,290
Apr	373,179	453,425
May	396,672	487,178
June	420,165	644,912
July	443,657	682,335
Aug	467,150	618,109
Sept	490,642	622,495
Oct	514,135	626,367
Nov	537,627	646,331
Dec	561,120	
2009-2010	561,120	

Biennium To Date
Actual v. Projected

120%

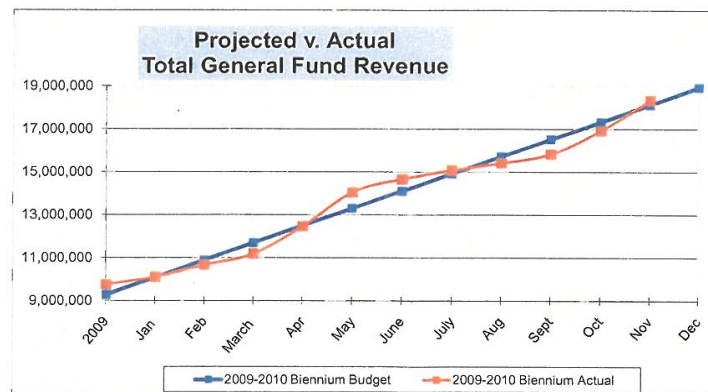


TOTAL GENERAL FUND REVENUE

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	9,285,873	9,767,721
Jan	10,091,284	10,116,244
Feb	10,896,695	10,676,033
March	11,702,107	11,198,467
Apr	12,507,518	12,474,089
May	13,312,929	14,057,058
June	14,118,340	14,673,669
July	14,923,751	15,091,438
Aug	15,729,162	15,421,685
Sept	16,534,574	15,851,272
Oct	17,339,985	16,937,807
Nov	18,145,396	18,351,459
Dec	18,950,807	
2009-2010	18,950,807	

Biennium To Date
Actual v. Projected

0%

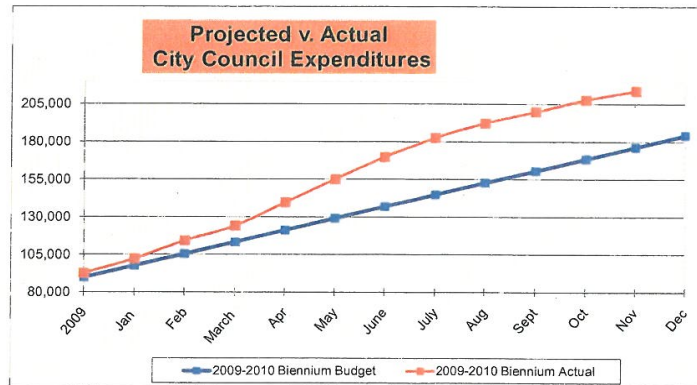


**City of Kenmore, Washington
General Fund Expenditure Graphs
November 30, 2010**

CITY COUNCIL

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	89,833	92,767
Jan	97,706	102,358
Feb	105,579	114,420
March	113,452	124,323
Apr	121,324	139,806
May	129,197	155,221
June	137,070	170,017
July	144,943	182,714
Aug	152,816	192,343
Sept	160,689	200,030
Oct	168,561	207,893
Nov	176,434	213,816
Dec	184,307	
2009-2010	184,307	

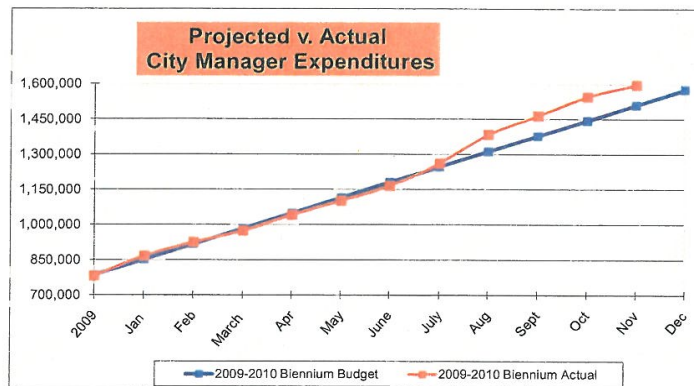
Biennium To Date
Actual v. Projected 121%



CITY MANAGER

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	787,002	783,292
Jan	852,772	868,008
Feb	918,542	926,354
March	984,312	974,816
Apr	1,050,081	1,042,529
May	1,115,851	1,102,995
June	1,181,621	1,166,184
July	1,247,391	1,262,671
Aug	1,313,161	1,384,735
Sept	1,378,931	1,464,736
Oct	1,444,700	1,546,183
Nov	1,510,470	1,596,507
Dec	1,576,240	
2009-2010	1,576,240	

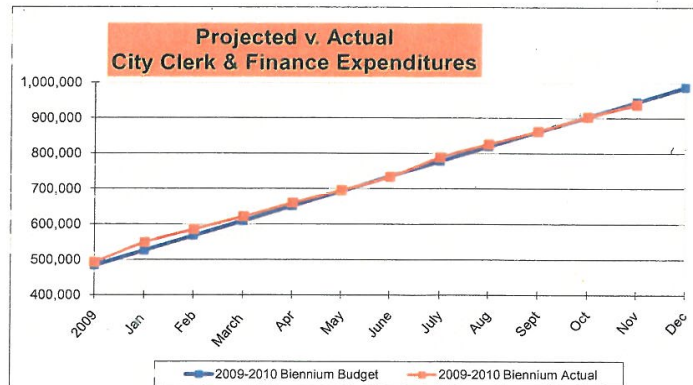
Biennium To Date
Actual v. Projected 106%



CITY CLERK & FINANCE

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	484,184	493,504
Jan	526,155	549,397
Feb	568,127	586,370
March	610,098	622,715
Apr	652,069	661,102
May	694,040	696,839
June	736,012	734,561
July	777,983	789,150
Aug	819,954	826,934
Sept	861,925	863,239
Oct	903,897	903,670
Nov	945,868	938,299
Dec	987,839	
2009-2010	987,839	

Biennium To Date
Actual v. Projected 99%



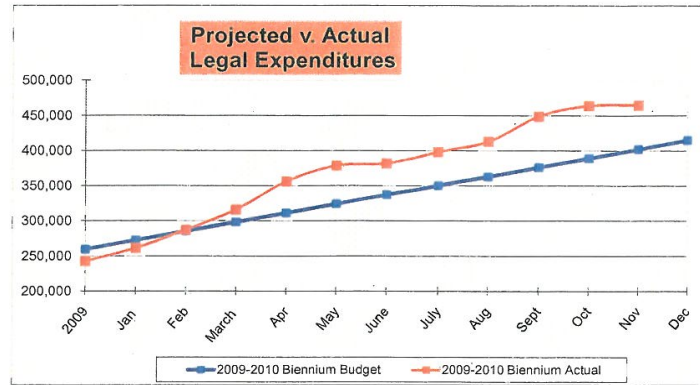
**City of Kenmore, Washington
General Fund Expenditure Graphs
November 30, 2010**

LEGAL

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	260,000	243,117
Jan	272,917	261,579
Feb	285,833	287,713
March	298,750	316,375
Apr	311,667	356,415
May	324,583	378,789
June	337,500	382,094
July	350,417	398,160
Aug	363,333	413,097
Sept	376,250	448,892
Oct	389,167	464,014
Nov	402,083	464,839
Dec	415,000	
2009-2010	415,000	

Biennium To Date
Actual v. Projected

116%

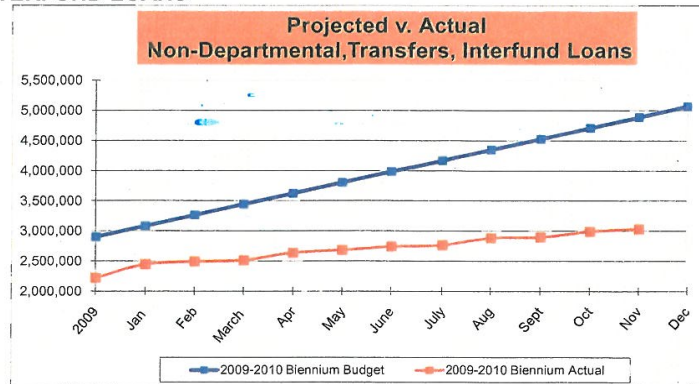


NON-DEPARTMENTAL, TRANSFERS, INTERFUND LOANS

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	2,908,814	2,227,901
Jan	3,088,990	2,451,943
Feb	3,269,165	2,496,174
March	3,449,341	2,518,511
Apr	3,629,517	2,642,470
May	3,809,692	2,687,884
June	3,989,868	2,744,857
July	4,170,044	2,769,702
Aug	4,350,219	2,886,102
Sept	4,530,395	2,901,376
Oct	4,710,571	2,995,716
Nov	4,890,746	3,036,273
Dec	5,070,922	
2009-2010	5,070,922	

Biennium To Date
Actual v. Projected

62%

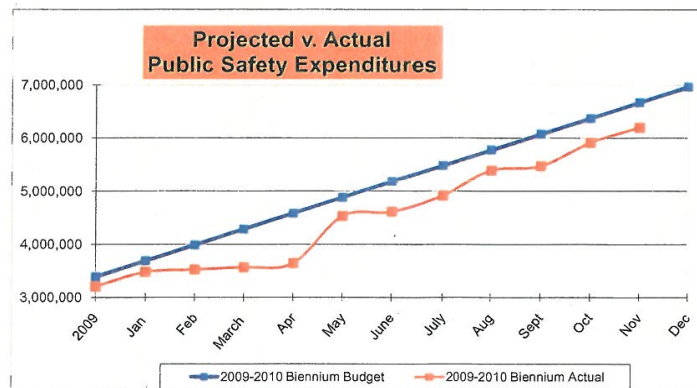


PUBLIC SAFETY

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	3,395,205	3,216,950
Jan	3,693,029	3,486,817
Feb	3,990,852	3,534,175
March	4,288,676	3,576,714
Apr	4,586,500	3,650,281
May	4,884,323	4,539,227
June	5,182,147	4,617,166
July	5,479,971	4,924,681
Aug	5,777,794	5,396,714
Sept	6,075,618	5,479,295
Oct	6,373,442	5,919,686
Nov	6,671,265	6,205,199
Dec	6,969,089	
2009-2010	6,969,089	

Biennium To Date
Actual v. Projected

93%



**City of Kenmore, Washington
General Fund Expenditure Graphs
November 30, 2010**

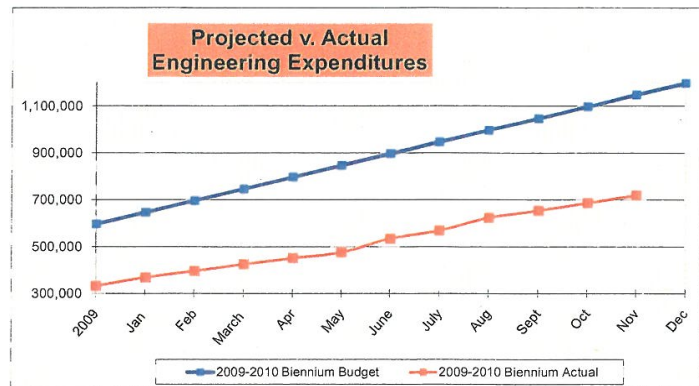
ENGINEERING

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	596,936	333,046
Jan	647,007	368,819
Feb	697,078	396,903
March	747,149	425,571
Apr	797,220	451,972
May	847,291	476,641
June	897,362	535,182
July	947,433	569,791
Aug	997,504	624,708
Sept	1,047,575	655,807
Oct	1,097,646	687,926
Nov	1,147,717	720,228
Dec	1,197,788	
2009-2010	1,197,788	

Biennium To Date

Actual v. Projected

63%



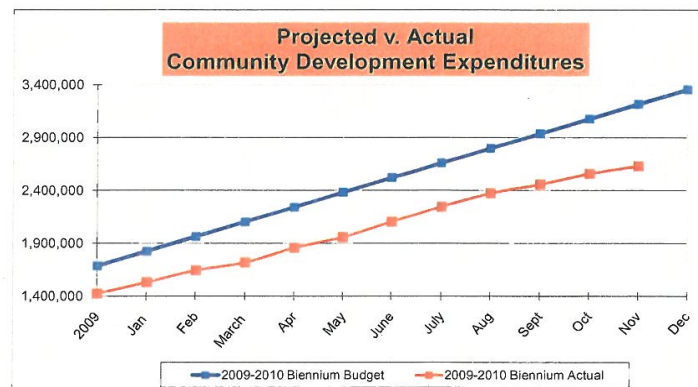
COMMUNITY DEVELOPMENT

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	1,688,782	1,428,577
Jan	1,827,946	1,534,303
Feb	1,967,111	1,647,343
March	2,106,275	1,721,973
Apr	2,245,440	1,859,847
May	2,384,604	1,961,630
June	2,523,769	2,107,074
July	2,662,933	2,249,317
Aug	2,802,097	2,376,221
Sept	2,941,262	2,462,035
Oct	3,080,426	2,561,281
Nov	3,219,591	2,632,915
Dec	3,358,755	
2009-2010	3,358,755	

Biennium To Date

Actual v. Projected

82%



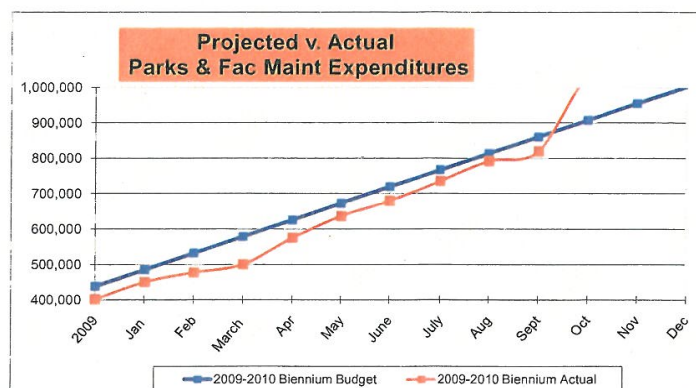
PARKS & FACILITY MAINT

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	438,714	402,516
Jan	485,650	451,141
Feb	532,585	478,768
March	579,521	501,737
Apr	626,457	576,229
May	673,392	637,832
June	720,328	680,748
July	767,264	735,949
Aug	814,199	792,890
Sept	861,135	821,038
Oct	908,071	1,035,149
Nov	955,006	1,074,809
Dec	1,001,942	
2009-2010	1,001,942	

Biennium To Date

Actual v. Projected

113%



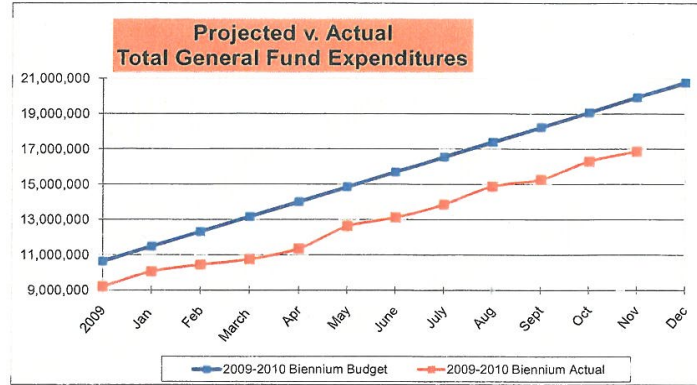
City of Kenmore, Washington
General Fund Expenditure Graphs
November 30, 2010

TOTAL GENERAL FUND EXPENDITURES

	2009-2010 Biennium Budget	2009-2010 Biennium Actual
2009	10,649,470	9,221,670
Jan	11,492,171	10,074,365
Feb	12,334,872	10,468,220
March	13,177,573	10,782,735
Apr	14,020,274	11,380,651
May	14,862,975	12,637,058
June	15,705,677	13,137,883
July	16,548,378	13,882,135
Aug	17,391,079	14,893,744
Sept	18,233,780	15,296,448
Oct	19,076,481	16,321,518
Nov	19,919,182	16,882,885
Dec	20,761,883	
2009-2010	20,761,883	

Biennium To Date
Actual v. Projected

86%



City of Kenmore, Washington
All Funds Cash Summary
November 30, 2010



	2008		2009-2010		
	BUDGET	ACTUAL	BUDGET	NOVEMBER	BIENNIUM TO DATE
GENERAL FUND					
Beginning Cash	3,272,032	2,529,775	3,683,966		2,748,258
Interfund Loan Repayment	0	5,005,000			6,850,000
Revenues	9,452,756	10,457,437	18,950,806	1,413,652	18,351,458
Total Sources	12,724,788	17,992,212	22,634,772		27,949,716
Interfund Loans	0	5,500,000	0		5,350,000
Expenditures	10,279,083	9,731,454	20,761,883	561,367	16,882,885
Ending Cash	2,445,705	2,748,258	1,872,888		5,716,831
Total Uses	12,724,788	17,979,712	22,634,771		27,949,716
STREET FUND					
Beginning Cash	2,143,354	1,824,860	(2,371,433)		228,568
Interfund Loan		2,600,000	0		3,550,000
Revenues	15,469,881	5,609,342	2,869,797	37,694	7,718,283
Total Sources	17,613,235	10,034,202	498,364		11,496,851
Interfund Loan Repaid					6,150,000
Expenditures	17,428,310	9,805,634	4,331,754	51,806	2,426,983
Ending Cash	184,925	228,568	(3,833,390)		2,919,868
Total Uses	17,613,235	10,034,202	498,364		11,496,851
ARTERIAL STREET FUND					
Beginning Cash	508,306	1,743	(767,728)		1,432,272
Interfund Loan	0	8,200,000	0		8,300,000
Revenues	15,155,532	16,306,984	30,486,515	0	18,055,142
Total Sources	15,663,838	24,508,727	29,718,787		27,787,414
Interfund Loan Repaid	0	11,905,000			10,500,000
Expenditures	15,608,274	11,171,455	22,610,350	32,877	21,121,331
Ending Cash	55,564	1,432,272	7,108,437		(3,833,917)
Total Uses	15,663,838	24,508,727	29,718,787		27,787,414
PUBLIC ART FUND					
Beginning Cash	64,877	65,238	67,379		67,378
Revenues	3,244	2,640	263,384	0	130,374
Total Sources	68,121	67,878	330,763		197,752
Expenditures	500	500	130,000	0	131,289
Ending Cash	67,621	67,378	200,763		66,463
Total Uses	68,121	67,878	330,763		197,752
PARK IMPACT FEE FUND					
Beginning Cash	640,501	842,539	976,339		976,339
Revenues	179,923	140,084	206,630	7,239	381,365
Total Sources	820,424	982,623	1,182,969		1,357,704
Expenditures	470,000	6,284	817,000	0	0
Ending Cash	350,424	976,339	365,969		1,357,704
Total Uses	820,424	982,623	1,182,969		1,357,704
TRANSPORTATION IMPACT FEE FUND					
Beginning Cash	833,963	988,063	146,087		146,087
Revenues	210,540	158,024	889,284	24,066	1,245,474
Total Sources	1,044,503	1,146,087	1,035,371		1,391,561
Expenditures	1,000,000	1,000,000	880,698	0	430,698
Ending Cash	44,503	146,087	154,673		960,863
Total Uses	1,044,503	1,146,087	1,035,371		1,391,561
SWAMP CREEK BASIN FUND					
Beginning Cash	0	0	0		0
Revenues	0	0	1,619,255	0	1,754,556
Total Sources	0	0	1,619,255		1,754,556
Expenditures	0	0	0	0	0
Ending Cash	0	0	1,619,255		1,754,556
Total Uses	0	0	1,619,255		1,754,556

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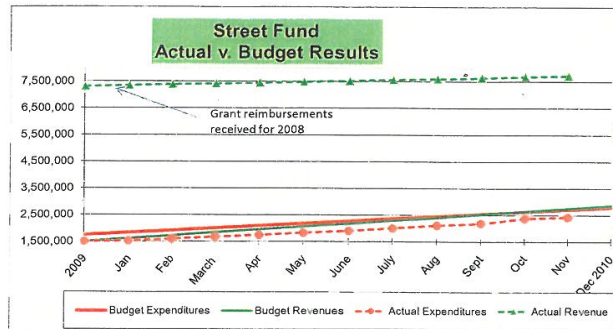
City of Kenmore, Washington
All Funds Cash Summary
November 30, 2010



	2008		2009-2010		
	BUDGET	ACTUAL	BUDGET	NOVEMBER	BIENNIUM TO DATE
MUNICIPAL CAPITAL RESERVE FUND					
Beginning Cash	7,403,784	2,716,023	5,702,042		2,402,043
Interfund Loan Repayment	0	6,900,000			8,800,000
Revenues	1,529,660	1,104,760	2,210,668	49,798	1,433,043
Total Sources	8,933,444	10,720,783	7,912,710		12,635,086
Interfund Loan		5,300,000			5,500,000
Expenditures	5,143,112	3,018,740	7,663,000	0	2,038,980
Ending Cash	3,790,332	2,402,043	249,710		5,096,107
Total Uses	8,933,444	10,720,783	7,912,710		12,635,086
CAPITAL PROJECTS FUND					
Beginning Cash	11,150,886	11,598,181	12,004,085		12,016,588
Revenues	2,060,158	2,140,079	6,626,878	4,726	5,285,738
Total Sources	13,211,044	13,738,260	18,630,963		17,302,326
Expenditures	5,950,800	1,734,172	17,525,189	41,238	12,515,771
Ending Cash	7,260,244	12,016,588	1,105,774		4,786,554
Total Uses	13,211,044	13,750,760	18,630,963		17,302,326
SURFACE WATER MANAGEMENT FUND					
Beginning Cash	3,877,397	4,113,562	3,865,039		3,865,039
Revenues	877,480	1,100,269	2,736,912	369,297	2,562,399
Total Sources	4,754,877	5,213,831	6,601,951		6,427,438
Expenditures	1,501,093	1,348,792	5,715,901	277,185	4,467,585
Ending Cash	3,253,784	3,865,039	886,050		1,959,852
Total Uses	4,754,877	5,213,831	6,601,951		6,427,438
STRATEGIC RESERVE FUND					
Beginning Cash	955,582	946,345	1,060,504		1,057,632
Interfund Loan Repayment					1,000,000
Revenues	104,922	111,287	237,693	0	206,832
Total Sources	1,060,504	1,057,632	1,298,197		2,264,464
Interfund Loans					1,000,000
Expenditures	0	0	0	0	0
Ending Cash	1,060,504	1,057,632	1,298,197		1,264,464
Total Uses	1,060,504	1,057,632	1,298,197		2,264,464
EQUIPMENT REPLACEMENT FUND					
Beginning Cash	429,718	440,823	510,358		510,358
Revenues	80,995	79,220	142,220	0	95,722
Total Sources	510,713	520,043	652,578		606,080
Expenditures	92,950	9,685	329,850	0	97,246
Ending Cash	417,763	510,358	322,728		508,834
Total Uses	510,713	520,043	652,578		606,080
TRUST AND AGENCY (NON BUDGETED FUND)*					
Beginning Cash	0	291,199	269,109		269,109
Revenues	0	27,626	0	611	140,737
Total Sources	0	318,825	269,109		409,846
Expenditures	0	49,716	0	269	125,853
Ending Cash	0	269,109	269,109		283,993
Total Uses	0	318,825	269,109		409,846
TOTALS					
Beginning Cash	31,280,400	26,358,351	25,145,747		25,719,671
Interfund Loan	0	22,705,000	0	0	28,500,000
Revenues	45,125,090	37,237,752	67,240,042	1,907,083	57,361,123
Total Sources	76,405,490	86,301,103	92,385,789	1,907,083	111,580,794
Interfund Loan	0	22,705,000	0	0	28,500,000
Expenditures	57,474,122	37,876,432	80,765,625	964,742	60,238,622
Ending Cash	18,931,368	25,719,671	11,620,163		22,842,173
Total Uses	76,405,490	86,301,103	92,385,788	964,742	111,580,794

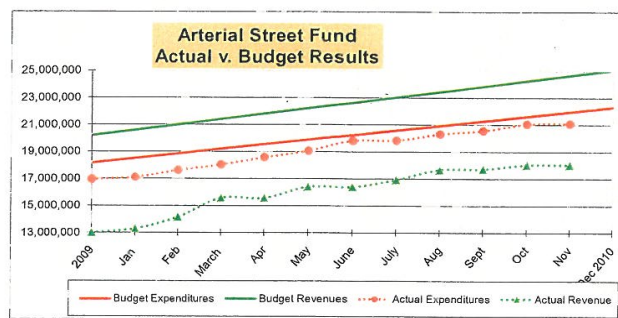
**City of Kenmore, Washington
Other Funds Monthly Activity
November 30, 2010**

STREET FUND				
	2009-2010 Budget Expenditures	2009-2010 Actual Expenditures	2009-2010 Budget Revenue	2009-2010 Actual Revenue
2009	1,748,149	1,505,137	1,503,320	7,304,004
Jan	1,836,627	1,529,355	1,617,193	7,348,600
Feb	1,925,105	1,601,376	1,731,066	7,385,480
March	2,013,583	1,679,482	1,844,939	7,418,832
Apr	2,102,061	1,750,691	1,958,812	7,450,953
May	2,190,539	1,833,028	2,072,685	7,487,930
June	2,279,017	1,915,191	2,186,559	7,524,083
July	2,367,494	2,010,996	2,300,432	7,562,529
Aug	2,455,972	2,117,674	2,414,305	7,600,077
Sept	2,544,450	2,198,898	2,528,178	7,640,517
Oct	2,632,928	2,375,177	2,642,051	7,680,589
Nov	2,721,406	2,426,983	2,755,924	7,718,283
Dec 2010	2,809,884		2,869,797	
2009-2010	4,331,754		2,869,797	
Total Actual to Date vs Total Budget		56%		269%



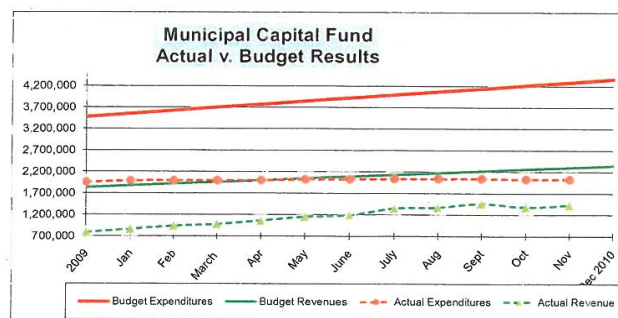
The Street Fund accounts for street maintenance operations, funded by the State's fuel tax and transfers from other funds. Before 2009, Phase I of the SR 522 highway project was accounted for in this fund including capital expenditures and grant revenues. Beginning in 2009, all of this capital project is accounted for in the Arterial Street Fund. There are still grant reimbursements due to this fund to repay 2008 expenditures.

ARTERIAL STREET FUND				
	2009-2010 Budget Expenditures	2009-2010 Actual Expenditures	2009-2010 Budget Revenue	2009-2010 Actual Revenue
2009	18,189,566	16,985,800	20,210,460	13,017,214
Jan	18,534,433	17,135,142	20,615,017	13,311,527
Feb	18,879,300	17,652,759	21,019,574	14,171,674
March	19,224,167	18,064,519	21,424,131	15,589,783
Apr	19,569,034	18,605,714	21,828,688	15,589,783
May	19,913,901	19,101,894	22,233,245	16,415,665
June	20,258,769	19,839,648	22,637,803	16,415,305
July	20,603,636	19,860,390	23,042,360	16,944,816
Aug	20,948,503	20,342,103	23,446,917	17,696,296
Sept	21,293,370	20,594,543	23,851,474	17,741,642
Oct	21,638,237	21,088,454	24,256,031	18,055,142
Nov	21,983,104	21,121,331	24,660,588	18,055,142
Dec 2010	22,327,971		25,065,145	
2009-2010	22,610,350		30,486,515	
Total Actual to Date vs Total Budget		93%		59%



The Arterial Street Fund accounts for capital improvements to the City's streets and SR 522, funded by various grants plus City resources from real estate excise tax and transportation impact fees. All phases of improvements to SR 522 are now accounted for in this fund. There is a time lag between project expenditures and reimbursements from grants; this accounts for the lower revenues compared to the expenditures.

MUNICIPAL CAPITAL FUND				
	2009-2010 Budget Expenditures	2009-2010 Actual Expenditures	2009-2010 Budget Revenue	2009-2010 Actual Revenue
2009	3,489,000	1,969,275	1,830,383	790,632
Jan	3,562,667	2,001,855	1,873,823	867,331
Feb	3,636,333	2,005,283	1,917,264	940,894
March	3,710,000	2,005,562	1,960,704	983,320
Apr	3,783,667	2,010,027	2,004,145	1,065,978
May	3,857,333	2,033,284	2,047,585	1,155,137
June	3,931,000	2,035,452	2,091,026	1,194,231
July	4,004,667	2,043,273	2,134,466	1,352,664
Aug	4,078,333	2,047,784	2,177,906	1,376,381
Sept	4,152,000	2,051,555	2,221,347	1,464,365
Oct	4,225,667	2,038,980	2,264,787	1,383,245
Nov	4,299,333	2,038,980	2,306,228	1,433,043
Dec 2010	4,373,000		2,351,668	
2009-2010	7,663,000		2,210,668	
Total Actual to Date vs Total Budget		27%		65%

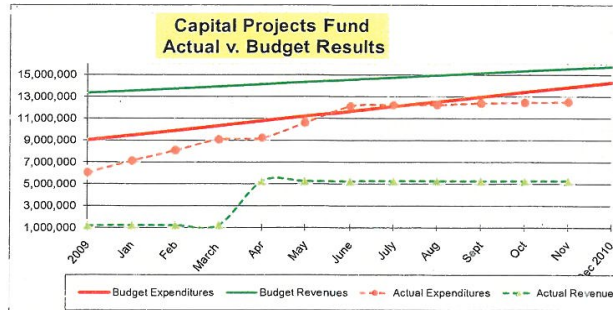


The Municipal Capital Fund accounts for the 1/2% real estate excise taxes levied by the City which are restricted to capital projects and improvements. Expenditures include park improvements and transfers to the Arterial Street Fund for transportation improvements.

**City of Kenmore, Washington
Other Funds Monthly Activity
November 30, 2010**

CAPITAL PROJECTS FUND

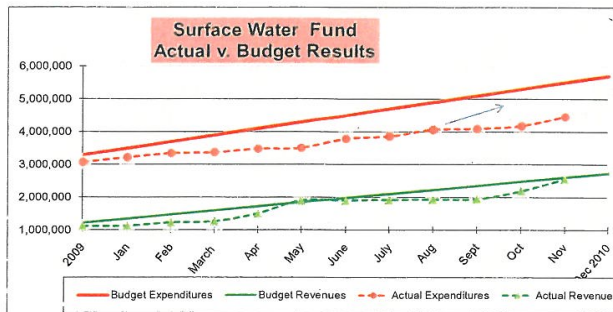
	2009-2010 Budget Expenditures	2009-2010 Actual Expenditures	2009-2010 Budget Revenue	2009-2010 Actual Revenue
2009	9,026,582	6,065,563	13,314,535	1,196,612
Jan	9,466,834	7,155,605	13,516,303	1,236,600
Feb	9,907,086	8,095,982	13,718,071	1,237,350
March	10,347,337	9,094,777	13,919,838	1,252,218
Apr	10,787,589	9,256,042	14,121,606	5,254,200
May	11,227,841	10,618,352	14,323,374	5,256,519
June	11,668,093	12,145,703	14,525,142	5,260,416
July	12,108,344	12,243,928	14,726,909	5,273,547
Aug	12,548,596	12,277,771	14,928,677	5,277,523
Sept	12,988,848	12,423,185	15,130,445	5,278,273
Oct	13,429,100	12,474,533	15,332,213	5,281,011
Nov	13,869,351	12,515,771	15,533,980	5,285,737
Dec 2010	14,309,603		15,735,748	
2009-2010	17,525,189		6,626,878	
Total Actual to Date vs Total Budget		71%		80%



The Capital Projects Fund accounts for leasing activity of Kenmore Village, the City Hall construction project, the scheduled purchase and sale of Kenmore Village, proceeds of debt financing and transfers from the General Fund. The majority of the expenditures for construction of city hall are expected over the next 12 month period, the sale of Kenmore Village was budgeted to occur in December of 2009.

SURFACE WATER MANAGEMENT FUND

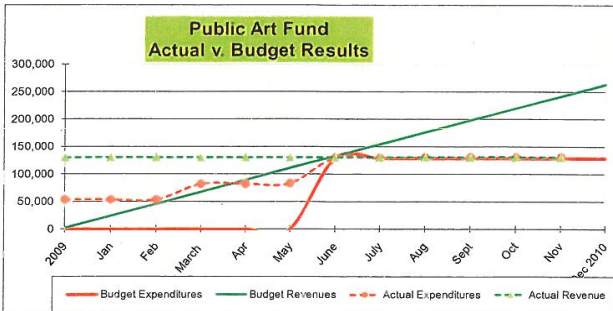
	2009-2010 Budget Expenditures	2009-2010 Actual Expenditures	2009-2010 Budget Revenue	2009-2010 Actual Revenue
2009	3,293,966	3,075,522	1,215,087	1,118,317
Jan	3,495,794	3,218,817	1,341,906	1,126,927
Feb	3,697,622	3,346,389	1,468,725	1,233,099
March	3,899,450	3,374,566	1,595,543	1,267,229
Apr	4,101,278	3,483,456	1,722,362	1,506,712
May	4,303,106	3,508,612	1,849,181	1,901,208
June	4,504,934	3,790,944	1,976,000	1,906,613
July	4,706,761	3,866,859	2,102,818	1,929,519
Aug	4,908,589	4,071,537	2,229,637	1,939,996
Sept	5,110,417	4,101,859	2,356,456	1,953,337
Oct	5,312,245	4,190,400	2,483,275	2,193,101
Nov	5,514,073	4,467,585	2,610,093	2,562,398
Dec 2010	5,715,901		2,736,912	
2009-2010	5,715,901		2,736,912	
Total Actual to Date vs Total Budget		78%		94%



This fund accounts for receipts from surface water assessments. The assessments are collected through the property tax billings; the majority of the receipts are collected in May and November. Expenditures are for surface water maintenance activities such as sweeping and drainage as well as capital improvements. Funds remaining from King County that are reserved for activities in the Swamp Creek Basin will be transferred and accounted for in a new fund known as the Swamp Creek Basin Fund.

PUBLIC ART FUND

	2009-2010 Budget Expenditures	2009-2010 Actual Expenditures	2009-2010 Budget Revenue	2009-2010 Actual Revenue
2009	0	53,994	2,012	129,920
Jan	0	53,994	23,793	130,374
Feb	0	53,994	45,574	130,374
March	0	82,494	67,355	130,374
Apr	0	82,494	89,136	130,374
May	0	83,589	110,917	130,374
June	129,000	130,680	132,698	130,374
July	129,000	130,680	154,479	130,374
Aug	129,000	130,789	176,260	130,374
Sept	129,000	131,289	198,041	130,374
Oct	129,000	131,289	219,822	130,374
Nov	129,000	131,289	241,603	130,374
Dec 2010	129,000		263,384	
2009-2010	130,000		263,384	
Total Actual to Date vs Total Budget		101%		49%

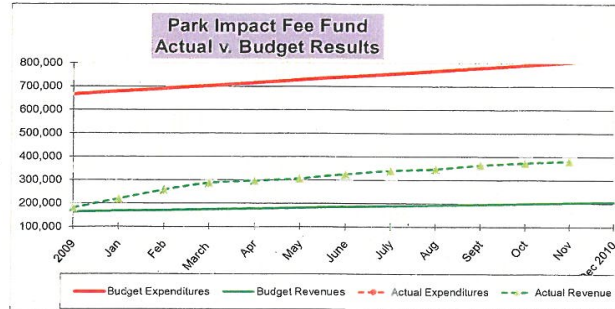


This fund accounts for public art authorized by Ordinance 01-0115. One percent (1%) of public project construction contracts is contributed to this fund to provide for public art displays or performing arts events as authorized by the City Council.

**City of Kenmore, Washington
Other Funds Monthly Activity
November 30, 2010**

PARK IMPACT FEE FUND

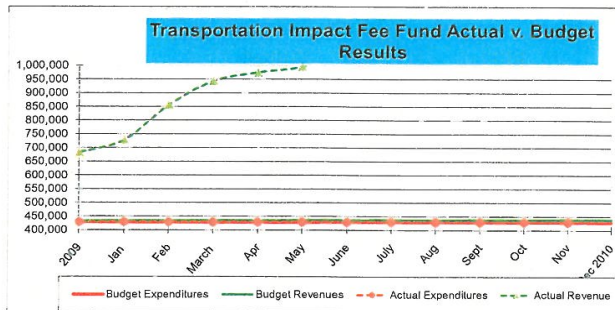
	2009-2010 Budget Expenditures	2009-2010 Actual Expenditures	2009-2010 Budget Revenue	2009-2010 Actual Revenue
2009	667,000	0	164,230	181,277
Jan	679,500	0	167,763	220,024
Feb	692,000	0	171,297	258,634
March	704,500	0	174,830	287,424
Apr	717,000	0	178,363	297,076
May	729,500	0	181,897	306,561
June	742,000	0	185,430	325,866
July	754,500	0	188,963	340,345
Aug	767,000	0	192,497	347,584
Sept	779,500	0	196,030	364,476
Oct	792,000	0	199,563	374,128
Nov	804,500	0	203,097	381,367
Dec 2010	817,000	0	206,630	
2009-2010	817,000		206,630	
Total Actual to Date vs Total Budget		0%		185%



This fund accounts for City imposed park impact fees on new development. Expenditures are for public park acquisitions and improvements. In the 2009-2010 budget, expenditures are projected for improvements to six City parks.

TRANSPORTATION IMPACT FEE FUND

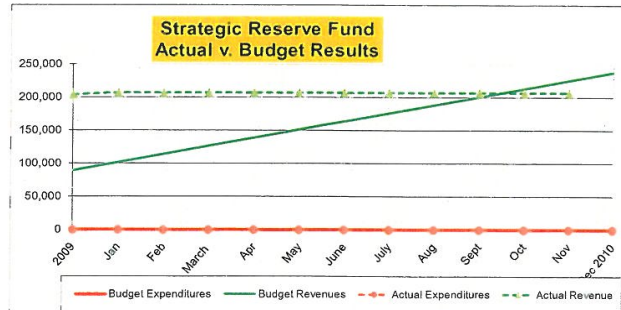
	2009-2010 Budget Expenditures	2009-2010 Actual Expenditures	2009-2010 Budget Revenue	2009-2010 Actual Revenue
2009	429,609	430,698	433,550	682,955
Jan	429,700	430,698	434,028	729,670
Feb	429,791	430,698	434,506	858,024
March	429,881	430,698	434,984	943,450
Apr	429,972	430,698	435,461	975,539
May	430,063	430,698	435,939	996,788
June	430,154	430,698	436,417	1,060,965
July	430,244	430,698	436,895	1,109,098
Aug	430,335	430,698	437,373	1,133,164
Sept	430,426	430,698	437,851	1,189,319
Oct	430,517	430,698	438,328	1,221,408
Nov	430,607	430,698	438,806	1,245,474
Dec 2010	430,698		439,284	
2009-2010	430,698		889,284	
Total Actual to Date vs Total Budget		100%		140%



This fund accounts for City imposed transportation impact fees on new development. Expenditures are for public transportation improvements. In the 2009-2010 budget, funds are budgeted for SR 522 construction costs.

STRATEGIC RESERVE FUND

	2009-2010 Budget Expenditures	2009-2010 Actual Expenditures	2009-2010 Budget Revenue	2009-2010 Actual Revenue
2009	0	0	89,058	203,821
Jan	0	0	101,444	206,832
Feb	0	0	113,831	206,832
March	0	0	126,217	206,832
Apr	0	0	138,603	206,832
May	0	0	150,989	206,832
June	0	0	163,376	206,832
July	0	0	175,762	206,832
Aug	0	0	188,148	206,832
Sept	0	0	200,534	206,832
Oct	0	0	212,921	206,832
Nov	0	0	225,307	206,832
Dec 2010	0	0	237,693	
2009-2010	0		237,693	
Total Actual to Date vs Total Budget		0%		87%

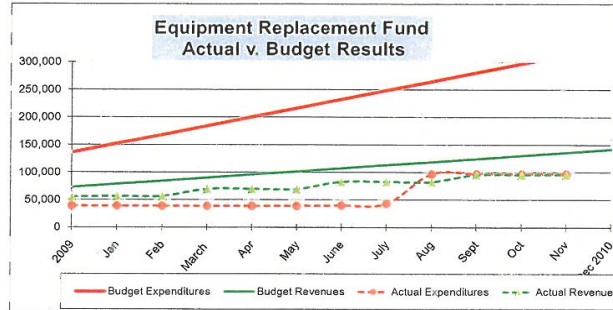


This fund serves as an emergency reserve and is fully funded, by transfers from the General Fund, to the maximum allowed by State law which is \$.375 per \$1,000 of City wide assessed value.

City of Kenmore, Washington
Other Funds Monthly Activity
November 30, 2010

EQUIPMENT REPLACEMENT FUND

	2009-2010 Budget Expenditures	2009-2010 Actual Expenditures	2009-2010 Budget Revenue	2009-2010 Actual Revenue
2009	136,250	39,469	72,690	55,275
Jan	152,383	39,469	78,484	56,791
Feb	168,517	39,469	84,278	56,791
March	184,650	39,469	90,073	69,768
Apr	200,783	39,469	95,867	69,768
May	216,917	39,469	101,661	69,768
June	233,050	40,348	107,455	82,745
July	249,183	43,288	113,249	82,745
Aug	265,317	97,246	119,043	82,745
Sept	261,450	97,246	124,838	95,722
Oct	297,583	97,246	130,632	95,722
Nov	313,717	97,246	136,426	95,722
Dec 2010	329,850		142,220	
2009-2010	329,850		142,220	
Total Actual to Date vs Total Budget		29%		67%



This fund is used to maintain a reserve for future replacement of equipment and receives payments from the various department and funds that benefit from or use the assets.

**City of Kenmore, Washington
Cash and Investment Report
November 30, 2010**



Fund	Beg. Cash & Inv.	Monthly	Monthly	End. Cash & Inv.
	from Prev. Mo.	Revenues	Expenditures	Current Month
General	\$4,877,044	\$1,413,652	\$561,366	\$5,729,330
Street	\$2,933,980	37,694	51,806	2,919,868
Arterial Street	(\$3,801,037)	0	32,877	(3,833,914)
Public Art	\$66,463	0	0	66,463
Park Impact Fee	\$1,350,467	7,239	0	1,357,706
Transp Impact Fee	\$936,797	24,066	0	960,863
Swamp Creek Basin	\$1,754,557	0	0	1,754,557
Municipal Capital	\$5,046,307	49,798	0	5,096,105
Capital Projects	\$4,810,567	4,726	41,238	4,774,055
Capital Projects-Retainage	\$441,283	2,095		443,378
Surface Water Mgt.	\$1,867,741	369,297	277,185	1,959,853
Strategic Reserve	\$1,264,465	0	0	1,264,465
Equipment Replacement	\$508,835	0	0	508,835
Trust & Agency	\$283,647	611	269	283,989
Totals	\$22,341,116	\$1,909,178	\$964,741	\$23,285,553

Fund	Cash, Savings, Local Govt Investment Pool	(> One Year) Fixed Investments	Total
General	\$6,945,387	-\$1,216,058	\$5,729,330
Street	2,619,868	300,000	2,919,868
Arterial Street	(3,833,914)	0	(3,833,914)
Public Art	51,463	15,000	66,463
Park Impact Fee	427,706	930,000	1,357,706
Transp Impact Fee	930,863	30,000	960,863
Swamp Creek Basin	354,557	1,400,000	1,754,557
Municipal Capital	5,096,105	0	5,096,105
Capital Projects	4,217,433	1,000,000	5,217,433
Surface Water Mgt.	1,449,853	510,000	1,959,853
Strategic Reserve	414,465	850,000	1,264,465
Equipment Replacement	58,835	450,000	508,835
Trust & Agency	183,989	100,000	283,989
Totals	\$18,916,610	\$4,368,942	\$23,285,553

City of Kenmore, Washington
Schedule of Investments
November 30, 2010



		Average Yield to Maturity-Securities				Overall Average Yield		0.72%
Report by Security	Investment #	Type	Maturity Date	Purchase Date	Rate	Yield	Principal or Balance	Yield Equivalents
Piper Jaffray								
CALLED 11/5/2010	3136FMNZ3	FNMA	11/5/2012	5/5/2010	1.35%	1.51%	-	-
CALLED 12/8/10	3133XYP25	FHLB	6/8/2012	6/8/2010	1.10%	1.10%	1,000,000.00	11,000.00
Total Piper Jaffrey Purchases							1,000,000.00	11,000.00
Banc of America								
CALLED 12/03/10	3133XTV45	FHLB	6/3/2011	6/16/2009	1.13%	1.45%	995,270.00	14,431.42
Total Wells Fargo Purchases							995,270.00	14,431.42
Banner Bank CD's								
	5740005425	CD	2/6/2011	2/6/2010	1.44%	1.45%	1,132,694.88	16,424.08
Total Banner Bank CD's							1,132,694.88	16,424.08
Sound Community Bank CD's								
	39780029	Money Market	2/1/2011	2/1/2010			1,000,000.00	32,500.00
Total Sound Community Bank CD's							1,000,000.00	32,500.00
Cascade Bank CD's								
	280128104	CD	3/16/2011	3/16/2010	1.49%	1.50%	90,000.00	2,250.00
	280128112	CD	3/10/2011	3/10/2010	0.99%	1.00%	150,000.00	2,250.00
Total Cascade Bank CD's							240,000.00	4,500.00
TOTAL ALL SECURITIES							\$ 4,367,964.88	\$ 64,424.08
Banner Checking and Savings						0.25%	\$5,941,662.96	29,708.31
Cascade Savings						0.25%	11,032.62	55.16
Cash							1,005.18	-
Local Government Investment Pool						0.22%	\$12,961,453	73,698.82
							-	-
Total Accounts							\$ 23,283,118.64	167,886.38

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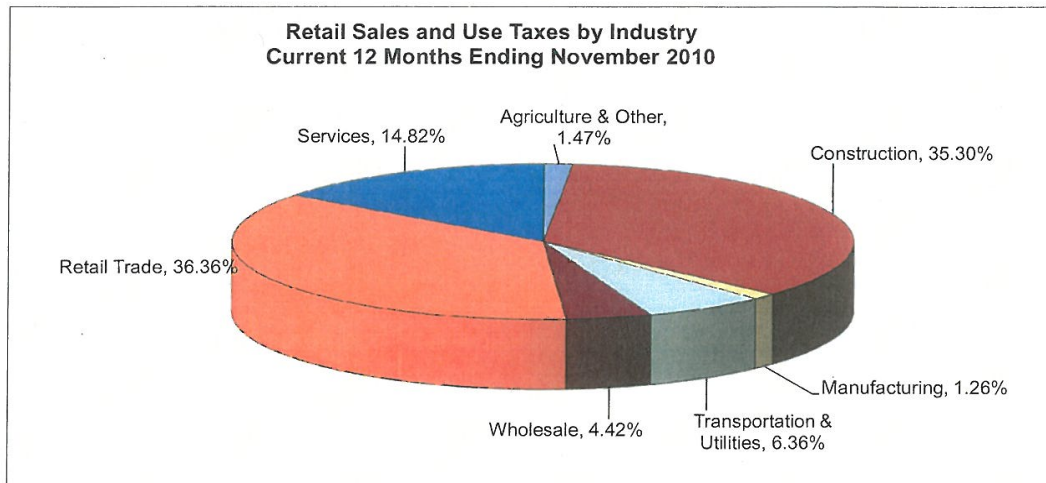
City of Kenmore, Washington
SALES TAX RECEIPTS BY BUSINESS TYPE
 November 2010

	SALES TAX	USE TAX	TOTAL	PERCENT
AGRICULTURE & OTHER	3,226.43	24.46	3,250.89	2.3%
CONSTRUCTION	34,917.65	2,496.72	37,414.37	27.0%
MANUFACTURING	1,989.51	15.64	2,005.15	1.4%
TRANSPORTATION & UTILITIES	7,640.48	815.45	8,455.93	6.1%
WHOLESALE	6,519.74	-4,426.91	2,092.83	1.5%
RETAIL TRADE	53,860.99	383.12	54,244.11	39.1%
SERVICES	28,005.90	612.00	28,617.91	20.6%
PUBLIC SERVICES	89.62	2,481.11	2,570.73	1.9%
	<u>136,250.32</u>	<u>2,401.61</u>	<u>138,651.93</u>	<u>100.0%</u>

**City of Kenmore, Washington
Retail Sales and Use Tax Distribution
November 30, 2010**



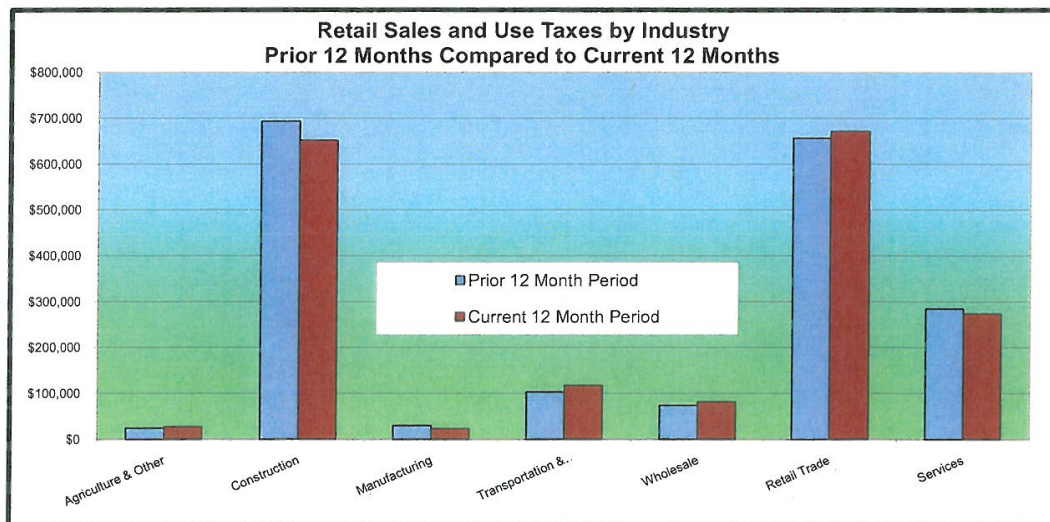
Industry	Prior 12 Months ending November 2009	Current 12 Months ending November 2010	% Increase/ (Decrease)	% of Total
Agriculture & Other (Landscaping, Animal Hospitals)	\$24,158	\$27,160	12.43%	1.47%
Construction	693,215	651,946 *	-5.95%	35.30%
Manufacturing (Printing, Publishing, Other Manuf.)	29,636	23,254	-21.54%	1.26%
Transp/Comm/Utilities (Telecomm., Air Transport.)	103,117	117,490	13.94%	6.36%
Wholesale (Lumber, Other Wholesale)	74,094	81,715	10.29%	4.42%
Retail Trade (Eating, Merchandise, Food Stores)	656,256	671,568	2.33%	36.36%
Services (Auction, Recreation, Auto Repair, Financial)	284,579	273,807	-3.79%	14.82%
Totals	\$1,865,055	\$1,846,940	-0.97%	100%
Increase/(Decrease)		(\$18,115)	-0.97%	



NOTE: Due to the City's Confidentiality Agreement with the Department of Revenue, specific business information cannot be disclosed.

* Approximately 40% of this is due to the Brightwater project.

There is a sixty-day lag between sales taxes collected and when they are remitted to the City



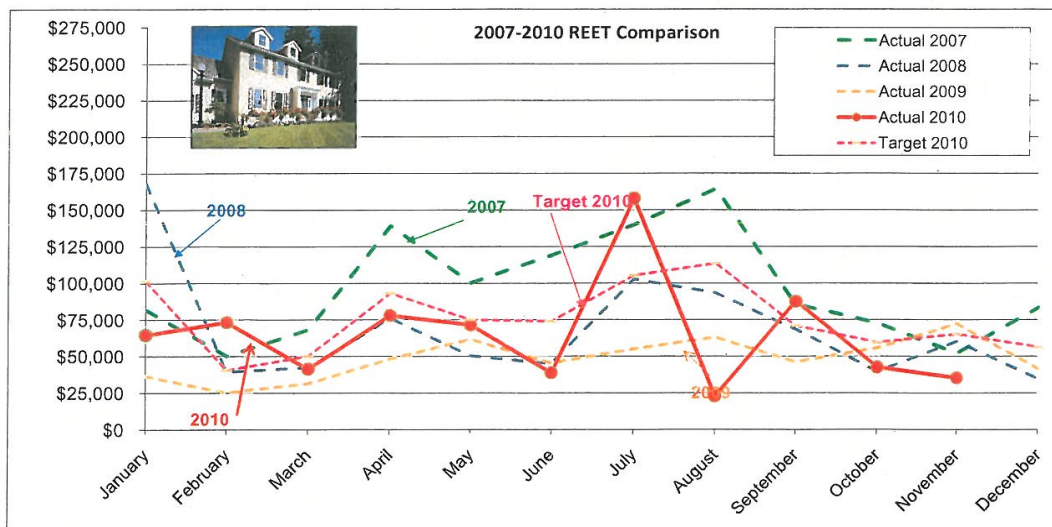
**City of Kenmore, Washington
Real Estate Excise Tax Report
November 30, 2010**



Real Estate Excise Taxes (REET) 2007 - 2010 Monthly Receipts					
	Actual 2007	Actual 2008	Actual 2009	Actual 2010	Target 2010
January	81,719	167,796	36,640	64,792	101,351
February	50,090	39,354	25,466	73,383	40,699
March	68,059	42,409	31,468	41,445	50,271
April	139,045	75,958	48,355	78,233	93,276
May	100,264	50,369	61,743	71,622	75,219
June	119,079	45,084	45,639	38,919	74,308
July	139,843	102,721	55,328	158,221	105,507
August	164,569	93,364	63,161	23,033	113,725
September	85,510	68,457	46,508	87,734	71,004
October	72,764	39,607	55,905	42,788	59,600
November	52,238	60,295	72,456	35,585	65,520
December	83,245	34,608	41,723		56,519
	\$1,156,425	\$820,021	\$584,392	\$715,754	\$906,999

For 2010, Taxes are \$173,085 more than the same period last year and below 2010 target by \$134,726

Real Estate Excise Taxes (REET) 2007 - 2010 Property Sales > \$500,000								
Sales actually occur in the prior month; there is a 30 day lag between sales and when the City receives the receipt								
	2007	2008	2009	2010	Taxes from > \$500,000 Sale Amounts			
	2007	2008	2009	2010	2007	2008	2009	2010
January	7,171,467	28,479,285	3,809,950	3,790,500	35,499	140,972	18,859	18,763
February	5,891,350	4,994,900	2,819,838	4,805,000	29,162	24,725	13,958	23,785
March	10,285,427	6,016,500	2,923,000	1,149,000	50,913	29,782	14,469	5,688
April	14,724,236	9,089,830	3,942,750	1,779,000	72,885	44,995	19,517	8,806
May	8,942,849	4,285,470	7,254,950	1,859,000	44,267	21,213	35,912	9,202
June	12,961,701	5,868,926	560,000	540,000	64,160	29,051	2,772	2,673
July	12,612,050	15,533,779	3,739,900	18,013,000	62,430	76,892	18,513	89,164
August	18,632,675	12,492,130	3,857,600	1,020,000	92,232	61,836	19,095	5,049
September	5,456,869	6,504,602	2,275,000	11,276,760	27,012	32,198	11,261	55,820
October	5,285,500	3,397,877	5,949,213	610,000	26,163	16,819	29,449	3,020
November	3,507,980	5,851,865	6,393,000	1,020,000	17,365	28,967	31,645	5,049
December	7,815,900	619,950	1,855,348		38,689	3,069	9,184	0
	\$113,288,004	\$103,135,114	\$45,380,549	\$45,862,260	\$560,777	\$510,519	\$224,634	227,019



* NOTE THE TARGETS ARE BASED ON A 3-YEAR AVERAGE (2007-2009) OF ACTUAL RECEIPTS.

City of Kenmore, Washington
Monthly Report for Kenmore Village
November 30, 2010



Revenues

Lease Income USPS (6700 Building)
Lease Income
Landlord Expense (CAM*) Reimbursement
Leasehold Excise Tax (31% of paid taxes)

Total Revenues

**Received in Biennium-to-
November Date**

\$3,976 \$14,246
0 356,927
0 66,303
0 31,521

Biennium Budget

\$0
226,067
0
0

\$3,976 \$468,997

\$226,067

Expenditures

6700 Building Improvements
Property Management
Utilities and Insurance
Repairs, Maintenance, Other Services
Surface Water and Fire Benefit Fees
Legal Services (One-Time for New Leases)
Leasehold Tax (12.84% of Lease Income)

Total Expenditures

Net Income (Loss)

\$384 \$108,032
0 41,204
0 38,439
0 133,523
0 4,026
0 4,853
0 34,466

\$384 \$364,542

\$3,591 \$104,455

\$0
87,357
102,806
0
0
0
0

\$190,163

\$35,904

NOTES: *CAM is Common Area Maintenance

City of Kenmore, Washington
Contingency Account Status
November 30, 2010



2009 Contingency Account Budget	\$74,859
2010 Contingency Account Budget	\$77,105
Less: Mid Biennium Adjustment	<u>(\$94,810)</u>
Adjusted Balance	\$57,154

City of Kenmore, Washington
SR 522 Phase I Revenue and Expenditure History
as of November 30, 2010

		Actuals Received on Cash Basis			
Phase I					
Stage 3 Burke Gilman Trail @73rd Ave NE-nearing completion					
Stage 1 SR 522 Central Segment 65th to 73rd and other improvements, in construction					
Stage 2 SR 522 West Segment 57th to 65th and other improvements, pending funding					
		Cumulative through 2008	2009	Nov-10 Transactions	Life to Date
Revenues:					
Wa State Transportation Improve. Board:					
to Street Fund	5,047,000	851,786	0	0	851,786
to Arterial Street Fund	0	148,214	2,545,308	0	4,195,214
Wa State Gas Tax	4,663,620	3,119,047	1,765,416	0	4,884,463
Federal Surface Transportation Prog	12,045,444	1,708,895	8,535,460	0	12,026,172
Brightwater	15,000	15,000	0	0	15,000
Federal: Wa State Dept of Trans Signal	357,914	0	0	0	546,862
King County Parks	906,500	514,616	201,467	0	716,083
King County Roads	350,000	350,000	0	0	350,000
Northshore Utility District Reimb	432,400	80,559	0	0	80,559
Puget Sound Energy Reimb	264,100	0	0	0	0
Northshore School Dist Reimb	22,258	0	0	0	0
Library Reimb	10,000	0	0	0	0
Comcast Reimb	168,800	88,620	0	0	88,620
Urban Partners	75,000	0	25,000	0	79,438
Fire District Reim	49,000	0	0	0	0
City Art Fund	126,486	0	0	0	0
City Funds:	5,607,250	0	0	0	0
Transfer from REET Muni Cap		1,083,250	0	0	1,083,250
Stage 1/181st Transfer from REET Muni Cap		0	334,000	0	334,000
Stage 2 Transfer from REET Muni Cap	700,000	0	700,000	0	700,000
Transfer from Trans Impact Fees		900,000	0	0	900,000
Total Revenues	30,840,772	8,859,987	14,106,651	0	26,851,447
Expenditures:					
Street Fund		15,148,961	1,090	0	15,150,051
Street-Interfund Loan Interest		0	0	0	0
1% Art Fund		0	0	0	0
Arterial Street Fund		253,860	11,708,313	1,402	14,671,579
Stage 2 Arterial Street Fund			483,830	0	914,921
Muni Cap Fund		46,782	0	0	46,782
Total Expenditures		15,449,603	12,193,233	1,402	30,783,334

City of Kenmore, Washington
SR 522 Phase II Revenue and Expenditure History
as of November 30, 2010

Phase II

SR 522 East Segment, 73rd to 83rd, nearing completion

****Actuals Received on Cash Basis****

Revenues:

	<u>Secured:</u>	<u>Cumulative through 2008</u>	<u>2009</u>	<u>Nov-10 Transactions</u>	<u>Life to Date</u>
Wa State Transportation Improve. Board:	3,450,000	3,145,975	131,526	0	3,450,000
Sound Transit	8,192,307	8,192,307	0	0	8,192,307
Brightwater	250,000	0	0	0	0
Federal Grant via WSDOT	697,312	578,381	91,120	0	669,501
Federal: WSDOT Signal/Overlay	683,608	185,272	498,322	0	683,594
Regional Mobility WSDOT	1,800,000	1,441,827	358,173	0	1,800,000
King County Metro	400,000	0	0	0	400,000
Wa State Gas Tax Grant	8,336,380	4,636,717	2,951,182	0	8,027,519
Comcast Reimb	147,770	92,680	0	0	92,680
Northshore Utility District Reimb	1,621,486	1,024,376	441,836	0	1,466,212
Northshore School District Reimb	28,914	0	0	0	0
PSE Reimbursement	150,000	0	0	0	0
City: Art Fund	161,006	0	0	0	0
City:	2,870,793			0	
Investment Earnings		92,191	15,331	0	107,522
Fuel Tax		274,153	0	0	274,153
Transfer of Trans Impact Fees		512,000	430,698	0	942,698
Transfer of REET		1,096,420	0	0	1,096,420
<u>Total Revenues</u>	28,789,576	21,272,299	4,918,188	0	27,202,607

Expenditures:

Arterial Street	22,497,211	4,671,626	0	28,128,741
Interfund Loan Interest	127,175	0	0	127,175
Art 1%	0	0	0	0
Transportation Impact Fee Fund	100,000	0	0	100,000
<u>Total Expenditures</u>	22,724,386	4,671,626	0	28,355,916

CITY OF KENMORE, WASHINGTON			
AGENDA BILL SUMMARY			
AGENDA TITLE			MEETING DATE
Authorize the City Manager to execute an amendment in the amount of \$105,000 to Contract 09-C776 with Gray & Osborne, Inc. to complete the final design of the 0057 Channel Relocation.			January 24 th , 2011
DEPARTMENT	DIRECTOR	CONTACT PERSON	PHONE
Engineering	Ron Loewen	Kent Vaughan	(425) 398-8900
COST OF PROPOSAL: <u>City Staff Cost:</u> Preparing agenda bill 10 hours Project Administration 480 hours <u>Gray & Osborne, Inc. Contract Services:</u> Design: \$ 81,480 Construction Observation: \$ 23,520 Total \$105,000		ACCOUNT NUMBER: 41 00 7087 0057 Channel Relocation	
AMOUNT BUDGETED: \$521,250 (2011/2012 Adopted Budget) Revised Project Budget: \$635,800 (2011/2012)		NAME AND FUND #: Surface Water Management Fund	
ATTACHMENT(S) TO AGENDA PACKET ITEM: • Amendment #1 Scope and Fee • Revised Alternative Plan Exhibit • June 21, 2010 Agenda Bill • June 21, 2010 Meeting Minutes			
SUMMARY STATEMENT: <u>Background:</u> In April 2009, City Council approved the 2009 / 2010 On-Call Surface Water and NPDES Support Services Contract (09-C776) with Gray & Osborne Inc. to study the flooding and sediment issues associated with Tributary 0057. The focus of the study was to investigate the sediment problems in the drainage basin, develop capital improvement project alternatives to properly manage the sediment load, and prevent future flooding of NE 170th Street / Simonds Road NE and private developments such as Wildcliffe Shores. The Tributary 0057 Sediment Study was identified in the 5-year Surface Water Capital Improvement Program (CIP) program adopted as part of the 2008 Surface Water Management Plan. On June 21st, 2010, City Council approved the Final Tributary 0057 Sediment Study report recommending Alternative 10 for implementation and authorized the City Manager to complete the final plans, specifications, and estimate (PS&E) and obtain required easements. Alternative 10 consisted of removing the existing sediment vault in NE 170th Street (along with the existing pipe running north from the vault) and constructing a combined 60 linear feet of box culvert across NE 170th Street (8' x 8') and 200 linear feet of open channel (11 feet wide) lined with ecology blocks through private property north to Tract C of Wildcliffe Shores Condominiums, where a natural sediment trap would be constructed. The estimated cost to design and construct Alternative 10 (from pre-design report with built-in 30% contingency) was \$558,000. When			

VIID. Authorize the City Manager to Execute Amendment No. 1 in the Amount of \$105,000 to Contract No. 09-C776 with Gray & Osborne, Inc. to Complete the Final Design of the 0057 Channel

combined with the 2009/2010 preliminary design budget of \$191,100, the overall project budget would be \$749,100.

Discussion: In the fall of 2010, City Staff met with property owners north of NE 170th Street to discuss the recommended Alternative 10. Tributary 0057 is classified as a Type 2 Stream, which requires 100-foot stream buffers. Given this information, property owners were reluctant to allow the open channel concept on their property because it would establish 100-foot stream buffers that would severely limit the use of their properties. For this reason, City Staff is proposing a revised alternative that will keep the stream underground in a box culvert under NE 170th Street and the private properties, a total length of 260 feet. The revised alternative would reduce the minimum setback requirement to 15 feet from the new drainage easement and lessen project impacts to the private property owners however it will increase the estimated cost to design and construct from \$558,000 to \$635,800. This increase is due to several factors listed below:

- The design and construction costs to install a box culvert over the entire project length is more expensive than the open channel concept (Alternative 10);
- A portion of the design budget (\$36,750) was scheduled to be spent in the 2009/2010 budget cycle but was never expended.

Overall Project Budget Summary – Tributary 0057

Task	Current Budget	Revised Budget	Status
Preliminary Design	\$191,100	\$161,000	Completed; \$30,100 under budget
Design	\$ 73,500	\$ 86,480	
Right of Way	\$ 43,000	\$ 43,000	
Construction	\$441,500	\$506,320	
Total	\$749,100	\$796,800	

The 2011-2012 adopted budget of \$521,250 is \$114,550 less than what is required to complete the project. The additional funds would come from the Surface Water Management Fund. Capital funds would be made available by delaying other projects such as the Juanita Drive ditch repair. A budget amendment for the project will be presented at a later date.

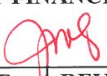
Attached is the proposed scope of work and fee from Gray & Osborne, Inc. to complete the design, permitting, bid support and construction observation services for the 0057 Channel Relocation project. The consultant fee is \$105,000. The design will be completed in 2011. Bid documents will be completed by March 2012. Construction is scheduled for the Summer of 2012. The project construction is estimated to take 6 weeks to complete.

CONSISTENT WITH OR COMPARISON TO PAST COUNCIL POLICIES, ORDINANCES, DIRECTION:

Consistent with the 2011-2012 Biennium Budget, June 21, 2010 Council action, Tributary 0057 Sedimentation Study and adopted 2008 Surface Water Management Plan.

RECOMMENDED CITY COUNCIL ACTION/SUGGESTED MOTION:

Authorize the City Manager to execute an amendment in the amount of \$105,000 to Contract 09-C777 with Gray & Osborne, Inc. to complete the final design of the 0057 Channel Relocation.

REVIEWED BY FINANCE DIRECTOR: 	REVIEWED BY CITY ATTORNEY:	APPROVED BY CITY MANAGER: 
TODAY'S DATE: January 10 th , 2011	REVISION DATE(S): January 13 th , 2011	FILE NAME & PATH (HYPERLINK): S:\0158 0057 Channel Relocation\Council Meetings\Jan 24, 2011\2011-01-24-AgendaBill-GO Contract-rev.doc

VIID. Authorize the City Manager to Execute Amendment No. 1 in the Amount of \$105,000 to Contract No. 09-C776 with Gray & Osborne, Inc. to Complete the Final Design of the 0057 Channel

**Contract No. 09-C776
Amendment No. 1**

The following sections of the On-Call Surface Water and NPDES Support Services contract dated April 1st, 2009, between the City of Kenmore and Gray & Osborne, Inc. is amended to read in its entirety as set forth below and in the attachments. All other terms and conditions of the underlying contract shall remain in full force and effect.

Section 1. Scope of Services to be Performed by Consultant. The Consultant shall perform the services described in Exhibit "A" of this Agreement. In performing the services, the Consultant shall comply with all federal, state and local laws and regulations applicable to the services. The Consultant shall perform the services diligently and completely and in accordance with professional standards of conduct and performance.

Section 2. Compensation and Method of Payment. The City shall pay the Consultant \$105,000 for the additional services described in Exhibit "A". The total not to exceed contract amount will be, with this amendment, \$416,683.

DATED this 24th day of January, 2011.

CITY OF KENMORE:

CONSULTANT:

BY: _____

By: _____

Title: City Manager, Fred Stouder

Title: _____

Attest/Authenticated:

Address: Gray & Osborne, Inc.
701 Dexter Ave N. Suite 200
Seattle WA, 98109

City Clerk, Lynn Suskin

Approved as to Form:

Rod Kaseguma, City Attorney

VIID. Authorize the City Manager to Execute Amendment No. 1 in the Amount of \$105,000 to Contract No. 09-C776 with Gray & Osborne, Inc. to Complete the Final Design of the 0057 Channel

AMENDMENT #1
SCOPE OF WORK

TRIBUTARY 0057 CHANNEL RELOCATION PROJECT

PURPOSE:

The purpose of the project is to remove the existing sediment vault in NE 170th Street (and the existing surface water pipe north of the sediment vault) and replace it with approximately 260 LF of concrete box culvert (8' x 8') and natural sediment trap at the outlet of the box culvert to manage sediment load. The box culvert limits would extend from the south side of NE 170th Street to the north property line of Parcel No. 5634500955 (7212 NE 170TH ST) and would outlet into the existing wetland area. The City's existing drainage easement on Parcel No. 5634500955 will be re-aligned (straightened) for the new box culvert construction. Upon project completion, Tributary 0057 in its entirety and its sediment load will be conveyed along this new alignment to the Sammamish River floodplain.

Construction documents for the project must be completed by March 2012. The Consultant will perform the tasks and work needed to design the project, prepare easement descriptions with plans, and develop plans and specifications for project bidding and construction. Project tasks include surveying, geotechnical investigation, utility potholing, hydrologic/hydraulic analysis, permit assistance, preliminary design, final design plans, specifications and cost estimate, and construction assistance and observation.

DESIGN CRITERIA: The City will determine the basic premises and criteria for the design. Reports and plans shall be developed in accordance with the latest adopted or approved edition of the following standards:

- Washington State Department of Transportation/American Public Works Association (WSDOT/APWA), Standard Specifications for Road, Bridge, and Municipal Construction 2010 edition;
- Washington State Department of Transportation – Latest revisions of Standard Plans for Road, Bridge, and Municipal Construction and Supplemental Specifications;
- Kenmore Municipal Code (KMC);
- King County Surface Water Design Manual (2009) as amended by the City of Kenmore in KMC 13.35;
- King County Road Standards (2007).

DESCRIPTION OF PROPOSED WORK

Task 1 - Surveying, Base Map

Perform a site survey to identify and map the surface features and existing utilities in the project area. The surveying work will include the following:

- a. City will arrange for right-of-entries from property owners upon request by the consultant.

- b. Contours, spot elevations, and surface features in the potential project area including adequate point cloud coverage along the proposed box culvert alignment (25 feet on both sides of the alignment), upstream area where Tributary 0057 flows split, and downstream area where the natural sediment trap will be constructed.
- c. Locating pavement, curb and gutter, sidewalks, structures, and other private utilities, driveways, landscaping, vaults, building footprints, street lights, power poles, large trees (over 6" DBH) and other surface features within the area surveyed.
- d. Existing utilities such as water, sanitary sewer and surface water systems including water valve rim and nut elevations, water meter locations, hydrants, water vault locations, sanitary sewer and surface water manhole and catch basin rim elevations, pipe sizes and invert elevations of all pipes in manholes and catch basins.
- e. The existing surface water drainage system will be surveyed for the hydraulic analysis and design.
- f. Private utility locations including, but not limited to, natural gas, electrical power, telecommunications (telephone, fiber optic, cable system, etc.), METRO sewer, and others within the project area. Information shall be obtained from visible surface locations, existing site plans, utility location markings through G&O's request to the one-call utility locate, and information gathered by the surveyor from the private utility companies. Any existing fiber optic locations will include vertical elevation and any bends determined both horizontally and vertically.
- g. Identify easement centerline and stationing lines for project design and construction. Stationing lines will be marked and easily located so the contractor's surveyor can re-establish them. The location of the easement centerline may need to be established by the surveyor from City benchmarks and plat maps.
- h. Surveying for site investigations such as soil borings, test pits, and utility potholing.
- i. AutoCAD drawing contours, elevations, and dimensions shall be in English units. All surveying shall be tied into the King County and/or City's Survey Control Network.

The field survey, to the extent feasible, shall be developed in accordance with the latest edition and amendments of local and State regulations, guidelines, and specifications, including, but not limited to the following:

- Draft GeoSpatial Positioning Accuracy Standards for the National Spatial Data Infrastructure by the Federal Geographic Data Subcommittee, December 1996.
- All pertinent Washington State legislation, e.g. Chapter 58 of the Revised Code of Washington (RCW).
- All pertinent sections of the Washington State Administrative Code (WAC), e.g. Chapters 332 WAC.

Deliverables:

1. Surveyed base map meeting the requirements of the City of Kenmore Drafting Standards containing all of the necessary survey information, wetland delineation, and private property lines adjacent to the project and street right of way lines. The Surveyor shall provide a draft paper copy and electronic file (AutoCAD, or other approved version) of the base map survey for review and comment by the City. After approval, a final paper copy at 1"=20' scale and an electronic copy will be provided. The paper copy will be stamped and signed by a Surveyor (PLS) registered in the State of Washington.
2. Legal description and exhibit(s) for new easements to accommodate new box culvert and sediment trap improvements and access ingress / egress easements through private properties to maintain new box culvert and sediment trap improvements.

Task 2 — Geotechnical Investigation

The geotechnical scope of work is listed by tasks as determined by pre-design recommendations and field investigations.

- a. Investigate and review existing regional and local geologic information, reports, and studies relevant to the project design. The project may be located in an area with poor sub-surface soils.
- b. Perform onsite geologic investigations to identify subsurface conditions that may affect project design and construction. The investigations will include up to six (6) borings to depths of 25 to 35 feet maximum, installation of two (2) piezometers for ground water monitoring, standard penetration tests, soil samples, and soil analysis. Four (4) of the borings will be taken along the proposed culvert alignment.

The consultant shall provide all necessary equipment and operators for the geotechnical investigation. Ground elevation will be surveyed at boring locations and coordinated with the surveyor/civil designer. All surfaces shall be restored following geotechnical investigations. Permanent pavement shall be restored when geotechnical investigations disturb existing paved areas. City will arrange for right-of-entries from property owners upon request by the consultant.

- c. Geotechnical Report. The results of the geotechnical investigation will be provided in a bound report. The Consultant will submit an electronic draft copy for City review and comment. The geotechnical report will include the following:
 - (1) A summary of the regional geologic information.
 - (2) A description of the onsite geologic investigation, equipment, methods, and testing performed.
 - (3) Site specific geologic information such as site map, boring locations, boring logs, water elevations, soil samples, and soil analysis results.
 - (4) Analysis of the geologic information and recommendations for project construction.
 - (5) Recommendations for dewatering, soil stability, shoring, bearing strength, trench excavation, concrete panel patching and/or replacement, potential need for pipe foundation and support depending on material proposed by the civil designer, pipe bedding, and trench backfill.

The geotechnical report will be included in the project bid document and available to all bidders.

Deliverables:

1. The Consultant will provide two bound copies of the final geotechnical report, and one provided with an electronic copy of the final report, all graphs and tables, and any other information contained in the final report.

Task 3 - Hydrologic and Hydraulic Analysis and Report

Review existing hydrologic information and perform hydrologic and hydraulic modeling needed to design the new surface water system. The hydrologic and hydraulic work will include the following:

- a. Review existing and future hydrology for the project area including upstream contributory flows from Tributary 057 Sediment Study (Gray & Osborne, June 2010).
- b. Develop a hydraulic model for the existing and proposed drainage system using XP-SWMM. The model will provide the flow and backwater results for the existing drainage system for

the 2-, 10-, 25-, and 100-year storm events for existing basin conditions, and for the proposed drainage system for the 2-, 10-, 25-, and 100-year storm events for existing and future basin conditions.

- c. A draft Hydrologic and Hydraulic Analysis Report for the project describing the modeling performed and the results will be submitted during the first portion of the project design. The draft report will be used to evaluate the existing conditions, and help evaluate and select the new surface water system design.
- d. A Final Hydrologic and Hydraulic Report for the project will be submitted during the second half of the project design. The Final Report will include the existing conditions analysis and the analysis for the new surface water system design. The Final Report will contain the analysis, methodology, figures, graphs, tables, and computer program results (in the Appendix). The consultant will provide an electronic draft report for City review and comment before finalizing the report. The Final Report will be signed and stamped by a PE licensed in the State of Washington.

Deliverables:

1. The Consultant will provide two bound copies of the final Hydrologic and Hydraulic Report and one CD with an electronic copy of the final report, all graphs and tables, and electronic versions of any other information contained in the Final Report. The Consultant will also provide an electronic copy of all computer modeling files used in the analysis including input and output files.

Task 4 - Permit Assistance

Permitting is expected to occur early in the first half of the project. The permitting work will include the following:

- a. Determine what State and Federal Permits (if any) may be needed for the project.
- b. Prepare drafts of local, State, or Federal permit applications. Provide expert analysis and figures/information as needed for the permits.
- c. The Consultant will prepare the Environmental Checklist and City permit application forms and submit to City Engineering Department for review. City Engineering Department will supplement the environmental sections of the Environmental Checklist, if needed and submit checklist and 30% design plan set to City Department of Land Development and Permitting for review and approval.
- d. A Joint Aquatic Resource Permit Application (JARPA) will be prepared for City submittal to Washington Department of Fish & Wildlife (WDFW), Washington Department of Ecology (Ecology), and US Army Corps of Engineers (COE). This scope includes wetlands delineation and report, and a biological evaluation. If a wetlands mitigation plan is required, it shall be considered additional work and an addendum to the Engineering Agreement will be negotiated.

Deliverables:

1. The Consultant will provide two bound copies of the wetlands delineation report and biological evaluation, JARPA and SEPA Checklist, and an electronic copy of each.

Task 5 - Surface Water System Design, Utility Relocation, Construction Plans and Specifications

Using the results from the Surveying, Geotechnical, and Hydraulic Tasks detailed above, the Consultant will develop the design for the new system. The City anticipates that the new system will discharge at or near the existing discharge point. The Scope of Work assumes that standard open trench methods within an excavated trench will be used during construction. If poor sub-surface soils requiring special engineering design (e.g. pile caps) are discovered in the project area, an addendum to the Engineering Agreement will be negotiated.

The design work will include the following:

- a. Review the physical and hydraulic information, evaluate design alternatives for the replacement surface water system, and meet with City to discuss design alternatives and choose the preferred alternative.
- b. The location of public and private utilities, and potential utility conflicts, will be investigated for the design. The Consultant will determine what locations/utilities need to be potholed, and pothole and survey the utility locations and elevations. The pothole information will be added to the base map and new surface water system design. The Scope of Work anticipates excavating up to three (3) potholes.
- c. Coordinate with electric utility if distribution and transmission power poles will need to be relocated.
- d. Provide a preliminary design (approx. 30%) for the recommended surface water system. The consultant will work with the City to determine the recommended surface water system design. The preliminary design should include the proposed surface water system location, size, capacity, hydraulic performance, potential utility conflicts and resolutions, and other relevant considerations. Meet with the City to review the 30% design.
- e. Following the review of the 30% design plans, the consultant shall prepare the 60% and 90% design plans and special/technical specifications. It is anticipated that formal reviews with the City will occur at the 60% and 90% completion points. Following the review of the 90% plans and specifications, the consultant shall revise the drawings and specifications per the City's comments and perform final (100%) design for the new surface water system. Develop construction plans, details, and construction contract specifications for bidding. The work includes the bid item list and cost estimate. Construction plans, details, and specification will follow the standard City format for Bid Documents. Several drafts of the plans and specs will be submitted to the City for review and approval as the project proceeds (e.g. 30%, 60%, 90%, and 100%).
- f. Final Construction Plans will consist of 22"x 34" paper drawings stamped and signed by a PE licensed in Washington State. The bid document (unbound) will follow the standard City format and will be stamped and signed by the PE. The Consultant will complete and provide plan and profile drawings of the project improvements. A 1"=20' horizontal scale and 1"=10' vertical scale will be used in these drawings. Pavement restoration and resurfacing will be shown on a separate plan view and details drawing. Proposed and existing curb and gutter elevations shall be shown in the surface water profiles with back of sidewalk elevations shown on profile. A traffic control plan will be included in the final plan set.
- g. The Consultant shall prepare technical specifications and bid schedule for the project improvements for the City's use in the bid documents. Draft technical specifications will be provided at the 60% and 90% submittals stage for review and comment. Following the review

of the 100%, the Consultant shall provide one (1) set of hard copy and electronic files (MS Word and Adobe pdf) to the City for inclusion in the bid documents.

- h. Opinion of Probable Cost. The Consultant shall prepare a detailed opinion of probable cost using comprehensive spreadsheet based on the final design drawings and specifications for the Project. The Consultant will conduct specific research to determine the costs of specialized equipment by obtaining vendor quotes. The opinion shall be prepared at the 60%, 90%, and 100% design development levels and shall be based on 2010-2011 costs. Final estimate form will be based on the schedule of prices in the bid documents.

The City will be responsible for obtaining easements from property owners, all permits, copying the bid document and plans, advertising the project for bids, and distributing the bid document to the bidders.

Deliverables:

- 1. The Consultant will provide two 11"x17" paper copies of each draft plan submittal (30%, 60%, 90% and 100%) and an electronic copy of each.
- 2. The Consultant will provide one unbound 22"x34" paper copy, one unbound 11" x 17" paper copy, and an electronic copy of the final plan set (stamped and signed).
- 3. The Consultant will provide one unbound set of the technical specifications with electronic files to the City for inclusion in the bid documents.

Task 6 - Construction Assistance and Observation

Provide assistance to the City during bidding and project construction. The Scope of Work assumes that standard open trench methods and pipe support within an excavated trench will be used during construction. The work will include the following:

- a. All questions from bidders will be directed to the City. Consultant will provide bid support to the City including providing answers to technical questions, additional information or clarifications, and preparing Addendums for any changes needed to the plans or specifications during the bid process. The City will distribute any Addenda needed.
- b. The consultant will attend a pre-construction conference with the City and the winning bidder. The City will issue the notice to proceed when all City requirements have been met and material submittals have been approved.
- c. The consultant will review material submittals by the bidder in conjunction with the City. During construction the consultant will provide support services to evaluate technical questions, provide additional information or clarifications to the design plans, and prepare Change Orders for any changes needed to the plans or specifications.
- d. The Consultant will provide a part-time construction inspector for daily inspection of the project. The inspector will be responsible for monitoring overall project progress and adherence to the project design, completing daily construction reports, prepare progress estimates for bid items, change orders and all other documents required during construction.
- e. The Consultant's designers will conduct inspections to check actual soil and groundwater conditions with the Geotechnical investigations results and recommendations. Approximately six (6) site visits (one per week during construction period) are included. A memo documenting each inspection, items and conditions observed, and any recommendations will be sent to the City after each inspection.

- f. An Addendum to the Engineering Agreement will be negotiated if conditions requiring special engineering and inspection are encountered, such as poor sub-surface soils, additional soil inspections and testing, unusual dewatering requirements, pile caps or special pipe supports, structural rebar inspection and concrete pours.
- g. The City will processes and approve Change Orders and procedural changes, construction project records (e.g. work days, inspector logs), and pay estimates.

As-built surveying will be performed by the Construction Contractor as part of the Construction Survey bid item and is not included as part of the Consultant's Design/Construction Assistance work. The City will review the as-built survey information and update the design drawings with the as-built information.

Deliverables:

- 1. The Consultant will provide construction assistance and observation services including: bid support, submittal material review, technical support, requests for information (RFI's) response, progress estimates and change orders, and part-time (4 hours per day) inspection for estimated 45-working day construction duration.

Task 7 - Project Management

Project Management will include internal management and procedures needed by the Consultant for the project. PM includes personnel management, internal meetings, record keeping, monitoring the design progress and schedule, and the contract billing.

Design review meetings with the City are included in the design task with which they are associated.

A project schedule for the estimated start and estimated completion date of each of the above tasks is provided in table format below:

Task	Estimated Start	Estimated Completion
Notice to Proceed	1/17/2011	NA

Task 1 - Surveying, Base Map	1/17/2011	2/1/2011
Task 2 – Geo-technical Investigation	1/17/2011	2/15/2011
Task 3 - Hydrologic and Hydraulic Analysis and Report	1/17/2011	3/1/2011
Task 4 - Permit Assistance (submit permits in May 2011)	1/17/2011	9/1/2011
Task 5 - Surface water and Water System Design, Utility Relocation, Construction Plans and Specifications		
30% Design Submittal	4/1/2011	5/1/2011
60% Design Submittal	6/1/2011	7/1/2011
Easement acquisition	8/1/2011	3/1/2012
90% Design Submittal	7/1/2011	11/1/2011
100% Design Submittal	11/1/2011	3/1/2012
Task 6 - Construction Assistance and Observation	7/1/2012	8/15/2012
Task 7 – Project Management	1/17/2011	8/15/2012

VIID. Authorize the City Manager to Execute Amendment No. 1 in the Amount of \$105,000 to Contract No. 09-C776 with Gray & Osborne, Inc. to Complete the Final Design of the 0057 Channel

EXHIBIT "B" (Continued)
ENGINEERING SERVICES
SCOPE AND ESTIMATED COST
Amendment #1
City of Kenmore - Tributary 0057 Channel Relocation Project

Tasks	Principal Hours	Project Mgr. Hours	Project Eng. Hours	Senior Environmental Specialist Hours	Lead CADD Technician Hours	GIS Tech. Hours	Resident Inspector Hours	PLS Hours	Survey Tech. Hours	Survey Crew Hours
Surveying and Base Map Preparation		8			24			12	6	32
Geotechnical Investigation	2	4								
Hydrologic/Hydraulic Modeling	1	4	12			2				
Permit Assistance	4	20		80						
Surface Water Design	4	30	60		60					
Construction Assistance and Observation		16	60				180			
Project Management	12	24								
QA/QC	2	4	8				8			
Hour Estimate:	25	110	140	80	84	2	188	12	6	32
Estimated Hourly Rates:	\$56	\$46	\$38	\$38	\$33	\$23	\$23	\$42	\$30	\$75
Direct Labor Cost	\$1,400	\$5,060	\$5,320	\$3,040	\$2,772	\$46	\$4,324	\$504	\$180	\$2,400

Subtotal Direct Labor: \$25,046
Indirect Costs (171%): \$42,829
Total Labor Cost: \$67,875
Fee (15%): \$10,181
Subtotal Labor & Fees: \$78,056
Direct Non-Salary Cost:
 Mileage & Expenses (Mileage @ \$.50/mile) \$820
Subconsultant:
 Geotechnical \$8,750
 Wetland Delineation & Report \$15,000
 Subconsultant Overhead (10%) \$2,375
TOTAL ESTIMATED COST: \$105,000

CITY OF KENMORE, WASHINGTON			
AGENDA BILL SUMMARY			
AGENDA TITLE			MEETING DATE
Approval of final Tributary 0057 Sediment Study report and recommended improvements to Tributary 0057			June 21 st , 2010
DEPARTMENT	DIRECTOR	MEETING ATTENDEES	PHONE
Engineering	Ron Loewen	Ron Loewen, Staff Kent Vaughan, Staff Barry Baker, G&O	(425) 398-8900
COST OF PROPOSAL: <u>Previous Cost:</u> Staff Time: 120 hours Contracted: \$153,000 <u>Implementation Costs:</u> Contracted: \$ 20,000 Alternative 10: \$558,000 Total Costs: \$731,000		ACCOUNT NUMBER: 41 00 7087 Sammamish River Basin Study	
AMOUNT BUDGETED: 2011-2012 CIP Budget: \$500,000 (from 2008 Surface Water Management Plan) 2009-2010 0057 Sediment Study: \$250,000 Total Project Budget: \$750,000		NAME AND FUND #: Surface Water Management Fund	
ATTACHMENT(S) TO AGENDA PACKET ITEM: • Final Tributary 0057 Sediment Study • Agenda Bill dated April 26th, 2010 • Agenda Bill dated October 26th, 2009			
SUMMARY STATEMENT: <u>Background:</u> In April 2009, City Council approved the 2009 / 2010 On-Call Surface Water and NPDES Support Services Contract (09-C776) with Gray & Osborne Inc. to study the flooding and sediment issues associated with Tributary 0057 (Study Budget: \$191,133). The Tributary 0057 Drainage Basin is generally bounded by 72nd Avenue NE to the west, NE 148th Street to the south, 83rd Avenue NE to the east, and the Sammamish River to the north. The study was initiated because of difficulties in maintaining the existing sediment vault in NE 170th Street and the potential impacts that can result when sediment overloads the vault. The focus of the study was to investigate the sediment problems in the drainage basin, develop capital improvement project alternatives to properly manage the sediment load, and prevent future flooding of NE 170th Street / Simonds Road NE and private developments such as Wildcliffe Shores. The Tributary 0057 Sediment Study was identified in the 5-year Surface Water CIP program that was adopted as part of the 2008 Surface Water Management Plan. The adopted CIP plan reserves \$750,000 to complete this study and design and construct capital improvement projects that result from this study (\$250,000 in 2010 and \$250,000 in 2011 and \$250,000 in 2012). On October 26th, 2009, City Staff and Gray & Osborne presented the initial field report findings to City Council, which included locations of the major sedimentation sources, deposition areas, and stream channel conditions within the drainage basin.			

VIIA. Approval of Final Tributary 0057 Study Report and Recommended Improvements to Tributary 0057 – Ron Loewen, City Engineer

VIID. Authorize the City Manager to Execute Amendment No. 1 in the Amount of \$105,000 to Contract No. 09-C776 with Gray & Osborne, Inc. to Complete the Final Design of the 0057 Channel

On November 5th, 2009, City Staff and Gray & Osborne held the first of two open house meetings to discuss initial field observations with the public. Citizens were encouraged to provide comments, suggest issues that should be addressed in the study, and share local knowledge of this stream and drainage basin.

On April 19th, 2010, City Staff and Gray & Osborne presented the draft report to City Council.

On May 11th, 2010, City Staff and Gray & Osborne held the second of two open house meetings to present the draft report to the public.

Final Report: Based on input from the most recent City Council and public open house meetings, City Staff and Gray & Osborne made minor alterations to the draft report. The most notable change to the report was the renaming of the four alternatives under consideration to remain consistent with their project area designations, for clarity purposes.

Ten potential project areas were identified in the report with the potential to provide sediment management. City staff and Gray & Osborne ranked each project area based on the criteria below:

- Maintenance Frequency Cost
- Environmental Benefit
- Effort to Permit / Permit Requirements
- Design Effort/Technical Complexity
- Project Capital Costs
- Sediment Management Benefit

A point score (from 1 to 5) was assigned to each of the criteria above, with 1 being more expensive or of least benefit and 5 being of least cost or highest benefit. The four highest scoring project areas were further evaluated as project alternatives and are described below:

- **Alternative 10** – Removes the existing sediment vault in NE 170th Street and existing pipe running north from the vault and constructs a combination of 60 lineal feet of box culvert (8' x 8') across NE 170th Street and 200 linear feet of open channel (11 feet wide) lined with ecology blocks thru the private property to the north from the north end of the box culvert to Tract C of Wildcliffe Shores Condominiums. A natural sediment trap would be constructed at the north end of the channel in Tract C of Wildcliffe Shores Condominiums. The project cost estimate is \$558,000 (20 points).
- **Alternative 9** – Removes the existing sediment vault in NE 170th Street and existing pipe running north from the vault and constructs approximately 260 linear feet of box culvert (8' x 8') across NE 170th Street and thru the existing 20-foot drainage easement to Tract C of Wildcliffe Shores Condominiums. A natural sediment trap would be constructed at the north end of the box culvert in Tract C of Wildcliffe Shores Condominiums. The project cost estimate is \$649,000 (19 points).
- **Alternative 8** – Removes and replaces the existing sediment vault (~50 cubic yards of storage volume, CY) in NE 170th Street with an enlarged sediment vault (~200 cubic yards of storage volume) to trap the anticipated sediment load from the project area. With more volume to store sediment, the existing sediment accumulation occurring at the upstream end of the vault should cease, and the potential for flooding would be considerably reduced provided routine maintenance continues. The project cost estimate is approximately \$797,000 (18 points).

VIIA. Approval of Final Tributary 0057 Study Report and Recommended Improvements to Tributary 0057 – Ron Loewen, City Engineer

VIID. Authorize the City Manager to Execute Amendment No. 1 in the Amount of \$105,000 to Contract No. 09-C776 with Gray & Osborne, Inc. to Complete the Final Design of the 0057 Channel

- **Alternative 5** – Constructs a new sediment vault at the downstream point of the existing culvert under NE 163rd Street. This vault could be sized to hold a volume of 61 cubic yards in the available project limits and placed along Tributary-1 (west branch of Tributary 0057) where the majority of sediment loads originate. The existing sediment trap would remain in NE 170th Street and would function in its existing condition. The project cost estimate is \$520,000 (18 points).

Based on the project ranking and positive feedback received from the public and stakeholder's Wildcliffe Shores and the Washington State Department of Fish and Wildlife, City Staff and Gray & Osborne recommend **Alternative 10** for implementation. Alternative 10 (box culvert + open channel option) provides the most environmental benefit, is fish passable, and would result in a tree-lined open channel design to provide a more natural setting. Alternative 10 would also enhance the downstream wetland area, reduce long-term operation and maintenance costs (relative to the existing sediment vault), and prevent future flooding of NE 170th Street / Simonds Road NE and Wildcliffe Shores Condominiums by relocating the main channel to the east (where the existing storm water overflow conveyance system is located).

If City Council approves the Final Tributary 0057 Sediment Study report (and recommended Alternative 10) for implementation, City Staff will negotiate a new task order and amend the City's on-call contract with Gray & Osborne, Inc. to complete the final plans, specifications, and estimate (PS&E) of the Alternative 10 Tributary 0057 improvements and construction management services for the project. City Staff would return to City Council in late July 2010 for authorization to execute the contract amendment.

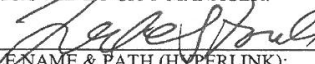
CONSISTENT WITH OR COMPARISON TO PAST COUNCIL POLICIES, ORDINANCES, DIRECTION:
Consistent with the City's 2009-2010 Budget, adopted 2008 Surface Water Management Plan and 2009-2010 On-call Surface Water and NPDES Support Services Contract with Gray & Osborne, Inc.

RECOMMENDED CITY COUNCIL ACTION/SUGGESTED MOTION:
Approve the Final Tributary 0057 Sediment Study report and recommended Alternative 10 for implementation, and authorize the City Manager to complete the final plans, specifications, and estimate (PS&E) and obtain required easements.

**REVIEWED BY FINANCE
DIRECTOR:**

**REVIEWED BY CITY
ATTORNEY:**

APPROVED BY CITY MANAGER:



TODAY'S DATE:
June 10th, 2010

REVISION DATE(S):

FILE NAME & PATH (HYPERLINK):

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Study\Council\100602-0057 Agenda Bill-rev.doc

VIIA. Approval of Final Tributary 0057 Study Report and Recommended Improvements to Tributary 0057 – Ron Loewen, City Engineer

VIID. Authorize the City Manager to Execute Amendment No. 1 in the Amount of \$105,000 to Contract No. 09-C776 with Gray & Osborne, Inc. to Complete the Final Design of the 0057 Channel

City of Kenmore
City Council Regular Meeting
Minutes
June 21, 2010

CALL TO ORDER - Mayor David Baker called the meeting to order at 7:00 p.m.

Councilmembers present: Mayor David Baker, Councilmembers Bob Hensel, John Hendrickson, Laurie Sperry, Allan Van Ness, and Glenn Rogers.

Councilmembers excused: Deputy Mayor Milton Curtis

Staff present: Fred Stouder, City Manager; Nancy Ousley, Assistant City Manager; Joanne Gregory, Finance Director; Ron Loewen, City Engineer; Debbie Bent, Director of Community Development; Jennifer Gordon, Public Works Operations Manager; Cliff Sether, Police Chief; Rod Kaseguma, City Attorney; and Lynn Suskin, City Clerk

FLAG SALUTE

Mayor David Baker led the flag salute.

AGENDA APPROVAL

Councilmember Laurie Sperry moved to approve the agenda as submitted.
Councilmember Bob Hensel seconded the motion. The motion passed unanimously.

CONSENT AGENDA

Councilmember Bob Hensel moved to approve the consent agenda as submitted. Mayor David Baker seconded the motion to approve the Minutes of the May 10, 2010 Council Meeting and the Adoption of Resolution No. 10-181 Authorizing the Duly-Appointed Administering Agency for A Regional Coalition for Housing (ARCH) to Execute all Documents Necessary to Enter Into Agreements for the Funding of Affordable Housing Projects, as Recommended by the ARCH Executive Board, Utilizing Funds from the City's Funds Committed for this Purpose. The motion passed unanimously.

CITIZEN COMMENTS

David Mason, 20305 60th Ave. NE, Kenmore, was present to state that he appreciated the work on the sidewalks and the removal of the trees.

BUSINESS AGENDA

Approval of Final Tributary 0057 Study Report and Recommended Improvements to Tributary 0057 – Barry Baker, Gray & Osborne, was present to provide a brief report/update. He was also available to answer any questions.

VIID. Authorize the City Manager to Execute Amendment No. 1 in the Amount of \$105,000 to Contract No. 09-C776 with Gray & Osborne, Inc. to Complete the Final Design of the 0057 Channel

City of Kenmore - Regular Council Meeting Minutes
June 21, 2010

Kent Vaughan, Senior Engineer, and Ron Loewen, City Engineer, were present to answer any questions.

Councilmember Laurie Sperry moved to approve the Final Tributary 0057 Sediment Study report and recommended Alternative 10 for implementation, and authorized the City Manager to complete the final plans, specifications, and estimate (PS&E) and obtain required easements. Councilmember Bob Hensel seconded the motion. The motion passed 5-1 with Councilmember John Hendrickson voting no.

Authorize the City Manager to Acquire the 4.2 Acre-Parcel at 18546 73rd Avenue NE with Surface Water Funds in the Amount of \$234,300 - Ron Loewen, City Engineer, was present to provide a brief report. He was also available to answer any questions.

Councilmember Bob Hensel moved to Authorize the City Manager to Acquire the 4.2-Acre Parcel at 18546 73rd Avenue NE with Surface Water Funds in the Amount of \$234,300. Councilmember Allan Van Ness seconded the motion. The motion passed 5-1 with Councilmember John Hendrickson voting no.

COUNCILMEMBER COMMENTS/REPORTS

Councilmember John Hendrickson stated his concerns regarding the accuracy of the University of Washington student report on the St. Edward State Park Carole Ann Wald Pool. He submitted an analysis of the gas bill and therm usage (January 2007 – March 2010) for the St. Edward State Park Carole Ann Wald Pool.

Brief discussion on the University of Washington student report and the feasibility study for the St. Edward State Park Carole Ann Wald Pool.

Councilmember John Hendrickson submitted a Confidential Executive Session June 14, 2010 letter regarding possible violations of the Open Public Meetings Act.

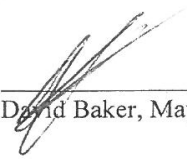
Councilmember Laurie Sperry commented about the use of interns for the mapping and how it is a cost savings for the City.

Councilmember Allan Van Ness briefly discussed the landscape maintenance on SR 522 and the St. Edward State Park Carole Ann Wald Pool.

ADJOURNMENT

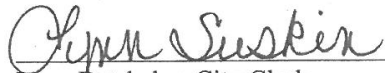
Mayor David Baker adjourned the regular meeting at 7:35 p.m.

City of Kenmore - Regular Council Meeting Minutes
June 21, 2010

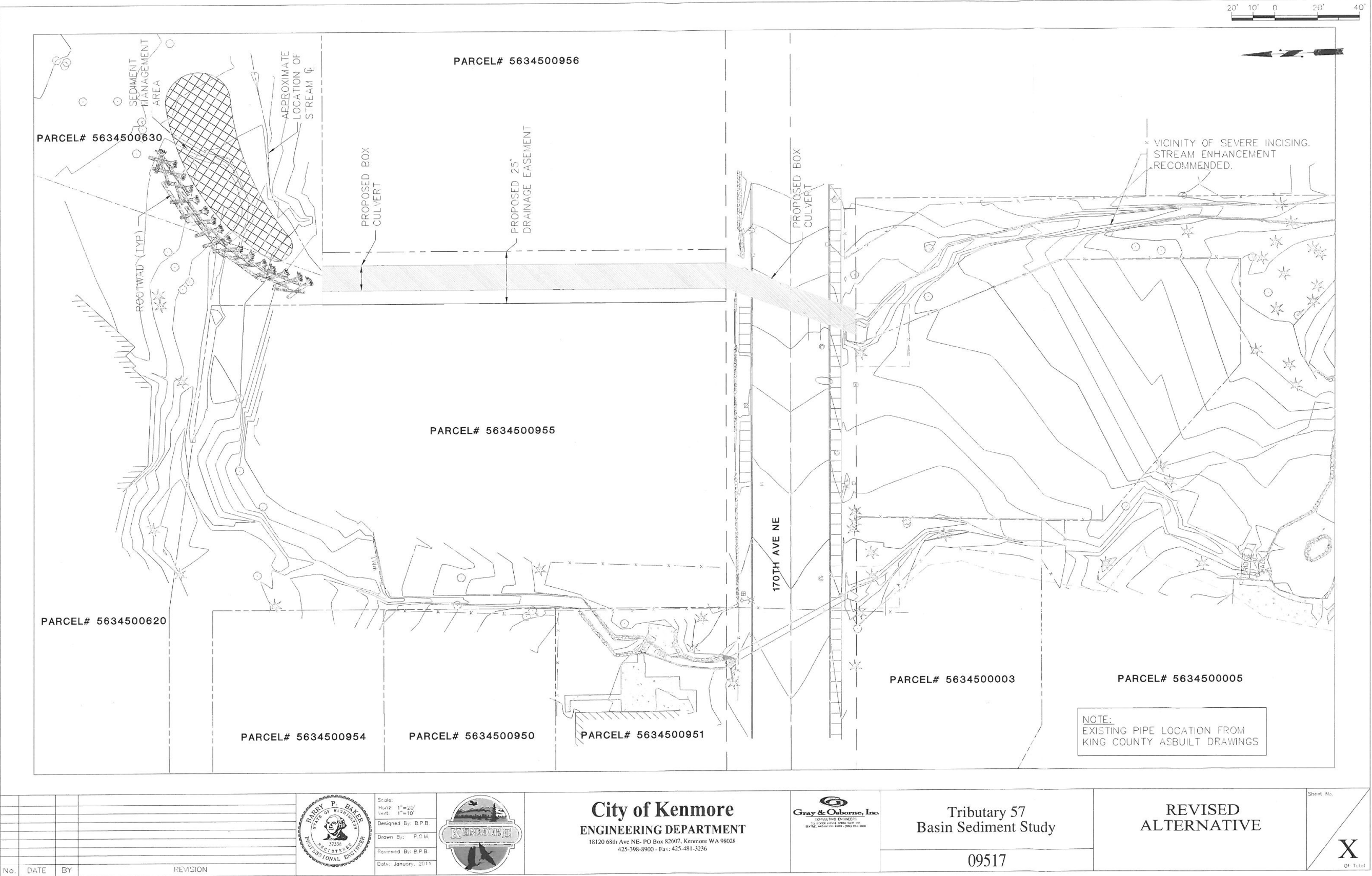


David Baker, Mayor

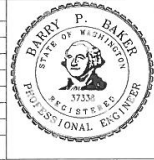
ATTEST:



Lynn Batchelor, City Clerk
Suskin



No.	DATE	BY	REVISION



Scale:
Horiz: 1"=20'
Vert: 1"=10'
Designed By: B.P.B.
Drawn By: F.P.B.
Reviewed By: E.P.B.
Date: January, 2011



City of Kenmore
ENGINEERING DEPARTMENT
18120 68th Ave NE- PO Box 82607, Kenmore WA 98028
425-398-8900 - Fax: 425-481-3236



Tributary 57
Basin Sediment Study
09517

**REVISED
ALTERNATIVE**

Sheet No.
X
Of Total

VIII. Authorize the City Manager to Execute Amendment No. 1 in the Amount of \$105,000 to Contract No. 09-C776 with Gray & Osborne, Inc. to Complete the Final Design of the 0057 Channel

CITY OF KENMORE, WASHINGTON			
AGENDA BILL SUMMARY			
AGENDA TITLE			MEETING DATE
RECP/UP Kenmore, LP Quarterly Report to the Council on the Kenmore Village Project			24 January 2011
DEPARTMENT	DIRECTOR	CONTACT PERSON	PHONE
Executive	Frederick Stouder	Frederick Stouder	425-398-8900
COST OF PROPOSAL: Staff time to prepare agenda bill		ACCOUNT NUMBER: 01 58 5456	
AMOUNT BUDGETED: 2011-2012 budget includes \$25,500 for implementation of the downtown plan.		NAME AND FUND #: General Fund	
ATTACHMENT(S) TO AGENDA PACKET ITEM: DDA and Ground Lease			
SUMMARY STATEMENT: Matt Burton, Amy Hoffman and Jeff Taylor of RECP/UP Kenmore, LP (formerly Kenmore Partners LLC) will present information to the City Council on the status of their ground lease of the Kenmore Village property and the Kenmore Village project. The amended and restated Disposition and Development Agreement calls for quarterly reports to the Council on the status of the project.			
CONSISTENT WITH OR COMPARISON TO PAST COUNCIL POLICIES, ORDINANCES, DIRECTION: On May 24, 2010 the City Council passed a motion that adopted Ordinance 10-0309 that provided approval of an amended and restated Disposition and Development Agreement (DDA) between the City of Kenmore and RECP/Up Kenmore LP and authorized the City Manager to execute the DDA. The amended and restated DDA effective 5/24/10 is the document that outlines the terms and conditions for the sale and development of the 9.6 acre downtown site known as Kenmore Village located on the northwest corner of 68 th Ave NE and NE 181 st Street. On 5/24/10 the City Council also passed a motion authorizing the City Manager to execute a Ground Lease Agreement (Contract 10-C879) between the City of Kenmore and RECP/UP Kenmore LP for the Kenmore Village shopping center. The ground lease passes the management and operation responsibility for the current Kenmore Village shopping center to RECP/UP, Kenmore LP (as tenant) until either the property is acquired under the terms of the DDA, the DDA is terminated or expires or the December 15, 2016 expiration date of the ground lease. The ground lease covers the shopping center parcels and does not apply to the former park & ride parcel or the current post office site (former city hall site). The Ground Lease is also an exhibit and part of the DDA.			
RECOMMENDED CITY COUNCIL ACTION/SUGGESTED MOTION: No action required			
REVIEWED BY FINANCE DIRECTOR: 		REVIEWED BY CITY ATTORNEY: 	
APPROVED BY CITY MANAGER: 			
TODAY'S DATE: January 12, 2011	REVISION DATE(S):		FILE NAME & PATH (HYPERLINK):

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GROUND LEASE AGREEMENT

This Ground Lease Agreement (the "Lease") is dated as of May 24, 2010 (the "Execution Date"), and is made by and between **THE CITY OF KENMORE**, a Washington municipal corporation ("Ground Lessor"), and **RECP/UP KENMORE, LP**, a Delaware limited partnership ("Tenant"). This Lease is entered into by and between Ground Lessor and Tenant in accordance with Section 7.1 of that certain Amended and Restated Disposition and Development Agreement dated May 24, 2010 (the "Development Agreement") between Ground Lessor and Tenant.

Ground Lessor and Tenant agree as follows:

ARTICLE 1 ADDRESSES

The parties addresses for the purposes of this Lease are as follows:

Ground Lessor's Notice Address:

City of Kenmore
18120 68th Avenue NE
P.O. Box 82607
Kenmore, Washington 98028-0607
Attn: Frederick Stouder, City Manager
Telephone: (425) 398-8900
Facsimile: (425) 481-3236

With a copy to: Rod P. Kaseguma
Inslee, Best, Doezie & Ryder, P.S.
777 108th Avenue NE, Suite 1900
Bellevue, Washington 98009-9016
Telephone: (425) 450-4241
Facsimile: (425) 635-7720

With a copy to: Perkins Coie LLP
10885 NE 4th Street, Suite 700
Bellevue, Washington 98004-5579
Attn: Craig H. Shrontz
Telephone: (425) 635-1404
Facsimile: (425) 635-2404

With a copy to: Heartland, LLC
524 Second Avenue, Suite 200
Seattle, Washington 98104-2323
Attn: James S. Reinhardsen, Managing Director
Telephone: (206) 682-2500
Facsimile: (206) 467-1429

Tenant's Notice Address:

RECP/UP Kenmore, LP
The Bradbury Building
304 S. Broadway, Suite 400
Los Angeles, California 90013
Attn: Matthew N. Burton, Principal
Telephone: (213) 437-0470
Facsimile: (213) 437-0474

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

ARTICLE 2 DESCRIPTION OF PROPERTY

Ground Lessor leases to Tenant that certain parcel of land legally described in attached Exhibit A (the "Property"), together with fixtures and improvements now erected or constructed on the Property, together with any and all appurtenances thereto, and subject to the burdens of the encumbrances, easements, reservations and restrictions of record ("Encumbrances") set forth in attached Exhibit B.

ARTICLE 3 TERM

3.1 **Term.** The Term of this Lease will begin on _____, 2010 (the "Commencement Date"), and end on the earliest to occur of the following: (i) the day on which Tenant or an assignee of Tenant acquires fee ownership of the Property under the Development Agreement; (ii) the day on which the Development Agreement is terminated or expires; or (iii) December 15, 2016 (the "Expiration Date").

3.2 **Possession.** Ground Lessor shall deliver to Tenant physical possession of the Property on the Commencement Date, subject to any existing tenancies.

ARTICLE 4 RENT

4.1 **Base Rent.** The "Base Rent" for the Property will be One Dollar (\$1.00) per year. Tenant shall pay Base Rent each year during the term of this Lease, in advance, beginning on the first day of the first full calendar month of the Term of this Lease and continuing on the same day each year during the Term. Payments will be made at Ground Lessor's address as set forth in Article 1 or at such other address as Ground Lessor may from time to time designate in writing.

4.2 **Additional Rent.** During the Term, Tenant shall pay directly all Operating Costs (as defined in Section 5.1 below) and Taxes (as defined in Section 5.2 below) associated with the Property. Payments by Tenant under this Section 4.2 are referred to in this Lease as the "Additional Rent." Base Rent, Additional Rent and Percentage Rent (described in Section 4.3 below) are sometimes referred to collectively herein as "Rent." The Rent will be paid without setoff, adjustment or deduction, and without abatement except as otherwise provided in this Lease. Any payment of Rent which is not paid within five days of the date when due will bear default interest at the lesser of twelve percent (12%) per annum or the highest rate permitted by law. Notwithstanding the foregoing, Ground Lessor shall pay those Taxes which are due and payable during calendar year 2010 to the extent Tenant is not otherwise entitled to reimbursement for such taxes and assessments from tenants who lease portions of the Property from Tenant.

4.3 **Percentage Rent.** In addition to the Base Rent and Additional Rent payable under the Lease, Tenant shall pay to Landlord, one third (1/3) of the amount, if any, by which the rent and other income collected by Tenant during the Term from any subtenant, licensee, concessionee or other user of the Property exceeds Tenant's obligations under this Lease for the same period together with all improvement, alteration and operating costs incurred by Tenant to date with respect to Tenant's efforts to secure and maintain the Property and secure and maintain sub-tenants and users on the Property and after Tenant has received a twenty percent (20%) internal rate of return on all such invested costs. Percentage Rent, if any, shall be paid to Ground Lessor within fifteen (15) days after each anniversary of the Commencement Date during the Term and within fifteen (25) days after the Expiration Date. Tenant shall maintain at a local office in western Washington usual and customary books and records which shall disclose all information reasonably required to determine the amount of any Percentage Rent that may be owed under this Lease. Such books and records shall be open to inspection and audit by Landlord or its duly authorized agents upon five (5) working days' notice. If any such audit should disclose a deficiency in Percentage Rent, Tenant shall promptly pay such deficiency and, if Percentage Rent was understated by three percent (3%) or more, then Tenant shall pay the cost of such audit. Otherwise, Landlord shall pay the cost of any such audit. Tenant shall maintain such books and records for not less than twenty-four (24) months following Expiration Date. Within fifteen (15) days after each anniversary of the Commencement Date during the Term and within the fifteenth day after the Expiration Date, Tenant shall furnish to Landlord a written statement certified by Tenant to be correct, showing all amounts used and calculations made by Tenant to determine whether any Percentage Rent is owed under this Section 4.3.

ARTICLE 5
OPERATING COSTS AND REAL ESTATE TAXES

5.1 **Operating Costs.** "Operating Costs," as used in this Lease, refers to the aggregate of all expenses, costs and disbursements of every kind and nature relating to or incurred or paid during the Term in connection with the ownership, operation and maintenance of the Property and any present or future equipment, fixtures and facilities used in connection therewith, including, but not limited to: the cost of all labor, supplies, materials and tools used in the operation and maintenance of the Property and any and all improvements thereon; the cost of all utilities for the Property; the cost of all insurance relating to the Property, including, but not limited to, the cost of casualty and liability insurance applicable to the Property; the cost of repairs, refurbishing, restoration and general maintenance of the Property and any and all improvements thereon; the cost of any capital expenditure incurred to comply with any Law; and all other items constituting operating and maintenance costs in connection with the Property. Notwithstanding the generality of the foregoing, "Operating Costs" will not include "Taxes" as defined in Section 5.2 below. Tenant shall directly pay any and all Operating Costs as and when incurred, due and payable.

5.2 **Taxes.** "Taxes," as used in this Lease, means all ad valorem taxes, real property taxes, personal property taxes, and all other taxes, assessments, use and occupancy taxes, transit taxes, water and sewer charges, excises, levies, license and permit fees, all other similar charges, and any special assessments or taxes in the nature of improvement or betterment assessments, if any, that are levied, assessed or imposed or become due and payable in connection with, or a lien upon, the Property or facilities used in connection therewith, and all taxes of whatsoever nature that are imposed in substitution for or in lieu of any of the taxes (including without limitation any leasehold excise taxes), assessments or other charges included in this definition of Taxes. Tenant shall directly pay all Taxes assessed against the Property for each tax period or portion thereof included within the Term and which during the Term are levied or imposed upon or become a lien or liens upon the Property or any part thereof when due and payable. "Taxes" will not include income, franchise, gross receipts, corporation, capital levy, excess profits, revenue, rent inheritance, gift, estate, payroll or stamp tax or any tax upon the sale, transfer or assignment of Ground Lessor's title or estate which at any time may be assessed against Ground Lessor or the Property; provided, however, if at any time during the Term the laws concerning the methods of real property taxation prevailing at the commencement of the Term are changed so that a tax or excise on rents or any other such tax, however described, is levied or assessed against Ground Lessor as a direct substitute in whole or in part for any Taxes, the substitute tax or excise on rents will be deemed to be Taxes.

Tenant may contest the legal validity or amount of any Taxes for which Tenant is responsible under this Lease, and may institute such proceedings as Tenant considers necessary. If Tenant contests any such Taxes, Tenant may withhold or defer payment or pay under protest but shall protect Ground Lessor and the Property from any lien by adequate surety bond or other appropriate security satisfactory to Ground Lessor in its reasonable discretion. Tenant shall furnish to Ground Lessor, at least ten (10) days before the date when any Taxes would become delinquent, receipts or other appropriate evidence establishing their payment.

ARTICLE 6 UTILITIES AND SERVICES

Tenant shall provide all utilities and other services to the Property required by Tenant, including any expense to connect or bring such utilities or services to the Property. Tenant shall pay all utility and service providers directly for the costs, including any required deposits or costs, utility connections and hook-ups, and for the installation of meters, for all utilities or services used in, on, about or in connection with the Property. In no event shall Ground Lessor be liable for any interruption or failure in the supply of any such utilities or services to the Property.

ARTICLE 7 USE OF PROPERTY

Tenant may use the Property for any legally permitted purpose as long as such use is in accordance with Ground Lessor's and Tenant's objective to cause the property to be re-developed as described in the Development Agreement and all such uses and any actions taken by Tenant with respect to the Property must be consistent with the Development Parameters and other requirements and standards for the re-development of the Property as described in the Development Agreement and a separate marketing plan provided to Ground Lessor by Tenant (the "Property Use Standards"). Ground Lessor and Tenant acknowledge that Tenant intends to purchase and re-develop the Property pursuant to the Development Agreement. Tenant may grant sub-leases and use agreements to third parties as permitted by Section 15.1 below Tenant's use of the Property includes the right to demolish the existing buildings on the Property and otherwise prepare the Property for development as long as such actions are consistent with the Property Use Standards. Notwithstanding the requirements in this Lease to meet the Property Use Standards (including the provisions in Section 8.2 and 15), Tenant may construct temporary tenant improvements that may not meet all the Development Parameters (but that will comply with all local building and zoning codes), if such improvements are necessary to obtain tenants on a short term basis and do not adversely impair the value of the Property or limit its future development as described in the Development Agreement. Any such temporary improvements will be removed or revised to meet the Development Parameters once Developer acquires fee ownership of the Property and begins developing the Project contemplated under the Development Agreement, or prior to the expiration of the Term if Developer does not acquire fee ownership of the Property.

ARTICLE 8 TENANT IMPROVEMENTS

8.1 Ownership of Improvements. All alterations, additions or improvements constructed on the Property by or on behalf of Tenant (the "Tenant Improvements") will be owned by Tenant until expiration of the Term or sooner termination of this Lease. The parties covenant for themselves and all persons claiming under them that the Tenant Improvements are real property. All Tenant Improvements on the Property at the expiration of the Term or sooner termination of this Lease shall then become Ground Lessor's property free and clear of all claims to or against them by any third party, and Tenant shall defend, indemnify and hold Ground

Lessor harmless against any and all liability and loss arising from such claims or from Ground Lessor's exercise of the rights conferred by this Section; provided that if this Lease terminates due to the purchase of the Property by Tenant under the Development Agreement, ownership of the Tenant Improvements shall remain with Tenant, and Ground Lessor shall convey to Tenant any reversionary interest it has in the Tenant Improvements at Closing.

8.2 Construction of Tenant Improvements and Advance Notice of Major Demolitions. Tenant will be permitted to make any improvements in or alterations or additions to the Property subject to the provisions set forth in Article 7. Tenant shall, however, provide Ground Lessor with at least ten (10) days' advance written notice of its intention to make the improvements, alterations or additions. At any time following Ground Lessor's receipt of such a notice, Ground Lessor may request a written status report from Tenant with respect to the proposed improvements, alterations or additions, and Tenant shall provide the requested status report to Ground Lessor in writing within thirty (30) days thereafter. All such improvements, alterations and additions will be at the sole cost and expense of Tenant. All improvements, alterations and additions undertaken by Tenant will be performed by a licensed general contractor. Tenant shall cause all work to be done in a good and workmanlike manner and shall comply with or cause compliance with all laws, ordinances, rules and regulations, including, but not limited to building and zoning laws, and health codes of the State, local, and United States governments and their respective agencies and boards having jurisdiction over the Property (collectively the "Laws") and with the requirements of all insurance companies insuring all or any part of the Property or improvements thereon as the same are in effect on the date hereof and may be hereafter modified, amended or supplemented. In addition to the notice described above related to improvements, alterations and improvements, Tenant shall provide the City with at least thirty (30) days' advance written notice if Tenant proposes the demolition of all or substantially all of the improvements located on the Property.

ARTICLE 9 COMPLIANCE WITH LAW

9.1 Compliance with Law. Tenant shall comply with the requirements of any Laws necessitated by Tenant's use of the Property. Ground Lessor shall cooperate fully with Tenant and assist Tenant (at Tenant's sole liability and expense) to obtain all necessary permits, licenses and approvals that may be required under any and all applicable Laws and for the use and operation of the Property as contemplated in this Lease.

9.2 Contesting Legal Requirement. Ground Lessor and Tenant shall each have the right upon giving notice to the other to contest any obligations imposed upon either by this Article and to defer compliance during the pendency of such contest, provided the enforcement of the requirement or law is stayed during the contest and the contest will not subject the other party to criminal penalty, civil penalty or fine or materially interfere with Tenant's use and occupancy of the Property, including, without limitation, Tenant's construction of improvements on the Property, or jeopardize the title to the Property. Each party shall cooperate with the other in the contest and shall execute any documents reasonably required in the furtherance of that purpose. If either party is contesting the application of this Article, then the party shall not be in default until and unless it is determined that the party must perform the obligation and fails to do

so by the date upon which all applicable appeal periods have expired or if the party has duly appealed the determination and enforcement is stayed pending appeal, then until all appeals have been finally decided against the party and the party fails to comply with the resulting decision.

ARTICLE 10
CONDITION, REPAIR AND
MAINTENANCE OF PROPERTY

Tenant has thoroughly inspected the Property, including the environmental condition of the Property. Tenant accepts the Property in its present condition, AS IS, WITH ALL FAULTS. Tenant acknowledges that, except as otherwise expressly provided herein, neither Ground Lessor nor any agent of Ground Lessor has made any representation as to the condition of the Property or the Property's suitability for Tenants intended use. Tenant and Ground Lessor expressly agree that there are and will be no implied warranties of any kind, including but not limited to any implied warranty of fitness for a particular purpose, arising out of this Lease, and there are no warranties that extend beyond those expressly set forth in this Lease, if any.

ARTICLE 11
DAMAGE AND DESTRUCTION

If all or part of the Property or the Tenant Improvements are damaged or destroyed by fire or other casualty during the Term of this Lease, the damage and destruction provisions in Section 16.1 of the Development Agreement will apply. If, under such provisions, Tenant elects to terminate the Development Agreement, this Lease will terminate as of the same day.

ARTICLE 12
CONDEMNATION

If all or part of the Property or the Tenant Improvements is subject to a taking by any public or governmental authority under power of eminent domain or any transfer in lieu thereof, the condemnation provisions in Section 16.3 of the Development Agreement will apply. If, under such provisions, Tenant elects to terminate the Development Agreement, this Lease will terminate as of the same day.

ARTICLE 13
INSURANCE; WAIVER OF CLAIM

13.1 Tenant's Insurance. Tenant shall at its expense purchase and keep in force during the term of this Lease the insurance required under Section 17.1 of the Development Agreement.

13.2 Waiver of Recovery and Subrogation. Ground Lessor and Tenant release and relieve the other, and waive their entire right of recovery for loss or damage to property located within or constituting a part or all of the Property, to the extent that the loss or damage is covered by (a) the injured party's insurance, or (b) the insurance the injured party is required to carry under this Article 13, whichever is greater. This waiver applies whether or not the loss is due to the negligent acts or omissions of Ground Lessor or Tenant, or their respective officers, directors,

employees, agents, contractors, or invitees. Each of Ground Lessor and Tenant shall have their respective property insurers endorse the applicable insurance policies to reflect the foregoing waiver of claims, provided however, that the endorsement shall not be required if the applicable policy of insurance permits the named insured to waive rights of subrogation on a blanket basis, in which case the blanket waiver will be acceptable.

ARTICLE 14 INDEMNIFICATION

Tenant shall defend, indemnify and hold Ground Lessor harmless from claims, suits, actions, or liabilities for personal injury, death or for loss or damage to property that arises out of the negligence or willful misconduct of Tenant, its employees or agents on the Property. This indemnity does not apply to (a) claims, suits, actions or liabilities to the extent they are caused by the negligent acts or omissions or willful misconduct of Ground Lessor, its agents, employees, contractors or invitees, (b) damage, claims, suits, actions or liabilities waived under Section 13.2, or (c) the indemnity in Article 22. The foregoing indemnity shall also include reasonable costs, expenses and attorneys' fees incurred in connection with any indemnified claim or incurred by Ground Lessor in successfully establishing the right to indemnity. Tenant shall have the obligation to defend, at Tenant's expense, any claim subject to this indemnity, using counsel reasonably acceptable to Ground Lessor. Ground Lessor agrees to cooperate fully with Tenant and Tenant's counsel in any matter where Tenant elects to defend, provided Tenant promptly reimburses Ground Lessor for reasonable costs and expenses incurred in connection with its duty to cooperate.

ARTICLE 15 MORTGAGES, ASSIGNMENT AND SUBLETTING

15.1 Assignment/Subletting. Except as otherwise provided herein, Tenant may not assign, transfer or convey its interest in this Lease, in part or whole, without the prior written consent of Ground Lessor, which consent may be withheld in its reasonable discretion. Any attempted assignment of this Lease without Ground Lessor's consent, when required, shall be null and void and deemed to be a material breach of this Lease not subject to cure, notwithstanding anything in this Lease to the contrary. A Transfer, as described in Section 23.3 of the Development Agreement, shall also be deemed to be an assignment of this Lease. No assignment shall release or relieve Tenant of any obligations under this Lease or otherwise. In the event of any assignment of this Lease, Tenant's assignee or successor shall sign an assumption agreement in which it assumes all obligations of Tenant under this Lease. Tenant shall not sublease or grant any use or occupancy rights to any third party for all or any portion of the Property if the subtenancy, use or occupancy would be inconsistent with the Property Use Standards or impose any financial or other legal obligations on Ground Lessor. Tenant shall notify Landlord at least ten (10) days prior to entering into any sublease or other agreement or instrument granting to any third party any right to possession or use of all or any portion of the Property and said notice shall include a copy of the proposed sublease, agreement or instrument to be granted to the third party subtenant or user.

15.2 **No Lender Assignment.** Tenant shall not mortgage, pledge or encumber this Lease, Tenant's leasehold estate, or the Tenant Improvements, or assign this Lease in part or whole, or sublet all or any part of Tenant's leasehold estate.

ARTICLE 16 TENANT'S PROPERTY

16.1 **Removal of Property During Term.** Tenant's improvements, trade fixtures and personal property (collectively called "Tenant's Property") however installed or located on the Property will be and remain the property of the Tenant and may be removed at any time and from time to time during the Term.

16.2 **Risk.** All of Tenants personal property of any kind or description whatsoever on the Property will be at Tenant's sole risk. Ground Lessor shall not be liable for any damage done to or loss of such personal property of Tenant arising from any acts or neglect of any other persons or caused in any other manner whatsoever unless and to the extent the damage is caused by the negligence or willful misconduct of Ground Lessor or breach of Ground Lessor's obligations under this Lease.

ARTICLE 17 DEFAULT

17.1 **Tenant's Performance.** All covenants and agreements to be performed by Tenant under this Lease will be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent, except as provided in Article 12. If Tenant shall commit a Default (as defined in Section 17.2), Ground Lessor may, without waiving or releasing Tenant from its obligations, cure the Default by making any such payment or performing any such other act to be made or performed by Tenant. All sums so paid by Ground Lessor and all necessary incidental costs together with interest thereon at twelve percent (12%) from the date of such payment by Ground Lessor, will be payable to Ground Lessor on demand.

17.2 **Tenant's Default.** Each of the following constitutes a default ("Default"):

(a) If Tenant fails to pay Rent as required by this Lease within five (5) days after receipt of written notice of failure to pay from the Ground Lessor; or

(b) If Tenant fails to perform or observe any other obligation of Tenant under this Lease within thirty (30) days after receipt of written notice from the Ground Lessor setting forth in reasonable detail the nature and extent of the failure referencing pertinent Lease provisions (or if the breach requires longer than thirty (30) days to cure, Tenant fails to start curing within thirty (30) days after receipt of written notice and to prosecute the cure to completion with due diligence); or

(c) If Tenant files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent, or files any petition or answer seeking an arrangement, composition, liquidation or dissolution under any present or future Federal, State, or other statute, law or

regulation relating to bankruptcy, insolvency or other relief for debtors, or shall seek or consent to or acquiesce in the appointment of a trustee, receiver or liquidator of the Tenant or of all or a substantial part of its assets, or of the Property, or shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(d) If a court enters an order, judgment or decree approving a petition filed against the Tenant seeking an arrangement, composition, liquidation, dissolution or similar relief under the present or future Federal, State or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and the order, judgment or decree remains unvacated or unstayed for ninety (90) days.

17.3 Ground Lessor's Remedies. If Tenant commits a Default, Ground Lessor may do any one or more of the following, in addition to pursuing its remedies under Law:

(a) Terminate this Lease.

(b) Enter and take possession of the Property and remove Tenant and all other persons and any property from the Property.

(c) Hold Tenant liable for and collect Rent and other indebtedness owed by Tenant to Ground Lessor or Rent that would have accrued during the remainder of the Term had there been no Default, less any sums Ground Lessor receives by reletting the Property, and less the unamortized cost of all Tenant Improvements.

ARTICLE 18 NOTICES

All notices, demands or requests which may or are required to be given by one party to the other under this Lease will be given in writing and either delivered in person, or sent by United States Registered or Certified Mail, postage prepaid, return receipt requested, or by a nationally recognized overnight courier service, and addressed to the Ground Lessor's address set forth in Article 1 or Tenant's address set forth in Article 1, as the case may be. Notices will be deemed to have been given upon receipt or attempted delivery where delivery is not accepted if personally delivered, or three (3) days after it is placed in a depository for United States Registered or Certified Mail, or one business day after it is deposited with a nationally recognized overnight courier. Either party may change its address upon notice given to the other.

ARTICLE 19 QUIET ENJOYMENT

Ground Lessor covenants that if and so long as Tenant keeps and performs each and every covenant and obligation to be kept and performed by Tenant under this Lease, Tenant's peaceable and quiet enjoyment of the Property shall not be disturbed by anyone claiming by or through Ground Lessor, subject to the provisions of this Lease.

ARTICLE 20
HOLDING OVER

If Tenant holds over after expiration of the Term of this Lease, or after the Lease is terminated, with or without Ground Lessor's consent, Tenant will be deemed to be occupying the Property under a month-to-month tenancy, and subject to all the terms, covenants and conditions of this Lease (other than the Term). No holding over by Tenant after the Term of this Lease shall operate to extend the Lease Term. In the event of any unauthorized holding over, Tenant shall indemnify Ground Lessor against all costs and claims for damages, including, without limitation, any claims for damages by any other tenant to whom Ground Lessor may have leased all or any part of the Property.

ARTICLE 21
MEMORANDUM OF LEASE

This Lease shall not be recorded except as permitted in this Article. At the request of either party, the parties shall promptly execute and record, at the cost of the requesting party, a short form memorandum describing the Property and stating this Lease's Term, the Commencement Date, and other information the parties agree to include.

ARTICLE 22
ENVIRONMENTAL PROVISIONS

22.1 **Environmental Law.** The term "Environmental Law" means any federal, state or local law, statute, ordinance, regulation or order pertaining to health, industrial hygiene, environmental conditions or hazardous substances or materials including those defined in this Article as "Hazardous Substances."

22.2 **Hazardous Substances.** The term "Hazardous Substance" means any hazardous or toxic substance, material or waste, pollutants or contaminants, as defined, listed or regulated now or in the future by any federal, state or local law, ordinance, code, regulation, rule, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any environmental conditions, health or industrial hygiene, including without limitation, (i) chlorinated solvents, (ii) petroleum products or by-products, (iii) asbestos and (iv) polychlorinated biphenyls.

22.3 **Tenant's Obligations.** Tenant agrees that:

(a) Neither Tenant nor its agents, contractors, employees or invitees will use, generate, manufacture, produce, store, release, discharge or dispose of on, under or about the Property, or off-site the Property affecting the Property, or transport to or from the Property, any Hazardous Substance except in compliance with Environmental Laws.

(b) Tenant shall give prompt written notice to Ground Lessor of:

(i) any proceeding or inquiry by any governmental authority with respect to the presence of any Hazardous Substance on the Property; and

(ii) all claims made or threatened by any third party against Tenant or the Property relating to any loss or injury resulting from any Hazardous Substance; and

(iii) Tenant's discovery of any occurrence or condition on the Property that could cause the Property or any part thereof to be subject to any restrictions on occupancy, or use of the Property under any Environmental Law.

(c) Tenant shall protect, indemnify, defend and hold harmless Ground Lessor and its directors, partners, officers, employees, agents, parents, subsidiaries, successors and assigns from any loss, damage, cost, expense or liability (including reasonable attorneys' fees and costs) directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, discharge, disposal or presence during the Term of a Hazardous Substance on the Property (or off-site of the Property) from any cause other than the acts or omissions of Ground Lessor or its employees, agents, contractors, licensees and invitees, or a breach of any representation, warranty, covenant or agreement contained in this Section 22.3 including, without limitation, the costs of any required or necessary repairs, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans.

22.4 Ground Lessor's Representation. Ground Lessor represents to Tenant that, to the best of Ground Lessor's knowledge, there is no Hazardous Substance present in, on or under the Property in any manner or quantity that violates any Environmental Law.

ARTICLE 23 ADDITIONAL PROVISIONS

23.1 Assignment and Assumption of Certain Retail Leases. By this Ground Lease, Ground Lessor also hereby assigns to Tenant, effective as of the Commencement Date, all of Ground Lessor's right, title and interest as Landlord under the retail leases and the guaranty identified below (collectively the "Retail Leases") which Retail Leases pertain to certain spaces located on the Property, and Tenant hereby accepts the assignment of the Retail Leases from Ground Lessor and agrees to assume, perform and discharge all of Ground Lessor's obligations as Landlord under the Retail Leases to the extent they pertain to the period of time after the Commencement Date. Notwithstanding the foregoing assignment, (i) Ground Lessor shall continue to be responsible for all obligations of Landlord arising under the Retail Leases to the extent they pertain to the period of time prior to the Commencement Date and (ii) Tenant shall re-assign the Retail Leases back to Ground Lessor if this Lease should terminate or expire for any reason during the term of the Retail Leases and prior to Tenant acquiring fee ownership of the Leased Premises described in the Retail Leases. For purposes of this Section 23.1, the Retail Leases include:

a. That certain Retail Lease between Ground Lessor and The Freeland Fitness Corporation, a Washington corporation, as Tenant, dated December 22, 2003, as amended by a

First Addendum dated January 20, 2009, a Second Addendum with an effective date of November 1, 2009 and a Third Addendum dated March 8, 2010, together with that certain Guaranty of Lease by Thomas H. Dooley and Wendy Y. Minitiero, husband and wife, dated December 22, 2003; and

b. That certain Retail Lease between Ground Lessor and Eduard Chupit and Galina Shishka, husband and wife, as Tenant, dated March 9, 2004, as amended by a First Addendum dated February 2, 2009, a Second Addendum with an effective date of November 1, 2009 and a Third Addendum dated March 26, 2010.

23.2 Removal of Liens. Tenant agrees not to suffer or permit any lien of mechanics or materialmen to be placed on the Property, and if any such lien does so attach to immediately pay, remove or bond over the same within thirty (30) days after Ground Lessor notifies Tenant of the existence of the lien. If Tenant does not timely pay, remove or bond over the lien, Ground Lessor may (at its sole option, but not as its exclusive remedy for such breach) satisfy the lien and the sum paid by Ground Lessor shall constitute Additional Rent due and payable by Tenant, together with interest thereon at the rate of one percent (1%) per month from the date of such payment by Ground Lessor.

23.3 Brokers. Ground Lessor and Tenant each represents and warrants to the other that it did not deal with any broker in connection with this transaction. Each party agrees to indemnify and hold harmless the other party from any and all real estate commissions or finder's fees or other compensation due or claimed by any realtor, broker or agent claiming through such party in connection with this Lease.

23.4 Successors. Subject to the restrictions contained in Article 15, this Lease shall bind and inure to the benefit of Ground Lessor and Tenant, and their respective heirs, legal representatives, successors and assigns.

23.5 Severability. If any provision of this Lease is determined to be invalid or enforceable by a court of competent jurisdiction, then that provision and the remainder of this Lease shall continue in effect and be enforceable to the fullest extent permitted by law. It is the intention of the parties that if any provision of this Lease is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

23.6 Integration. This Lease supersedes and cancels all previous negotiations, arrangements, offers, agreements or understandings, if any, between the parties, other than those relating to the Development Agreement. This Lease contains the entire integrated agreement between the parties as to Ground Lessor's leasing of the Property to Tenant, and supersedes any oral statements or representations or prior written matter not contained in this Lease. This Lease shall not be modified except by a writing signed by both parties.

23.7 Governing Law. This Lease will be governed by and construed and enforced in accordance with the laws of the State of Washington.

23.8 **No Waiver.** Failure of either party to complain of any act or omission on the part of the other, no matter how long the same may continue, shall not constitute a waiver of any rights under this Lease. No waiver by either party of any breach of any provisions of this Lease will be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action of any party requires the consent or approval of the other, consent or approval given on one occasion shall not be deemed a consent to or approval of that action on any other occasion.

23.9 **Cumulative Remedies.** The rights and remedies that either party may have under this Lease or at law or in equity, upon any breach, are distinct, separate and cumulative and shall not be deemed inconsistent with each other, and no one of them will be deemed to be exclusive of any other.

23.10 **Execution, Binding Effect.** This Lease shall not be effective or binding on the parties until it has been signed by both Ground Lessor and Tenant.

23.11 **Authority.** Each party represents to the other that the person signing this Lease on its behalf is properly authorized to do so.

23.12 **Force Majeure.** Performance by Ground Lessor or Tenant of their obligations under this Lease will be extended by the period of delay caused by force majeure, provided, however, that Tenant's obligations with respect to repair and restoration, and the payment of Rent, and Ground Lessor's or Tenant's obligations with respect to Hazardous Substances shall not be subject to extension of time pursuant to this paragraph. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the party who is obligated to render performance (but excluding financial inability to perform, however caused).

23.13 **Attorneys' Fees.** In the event either party requires the services of an attorney in connection with enforcing the terms of this Lease or in the event legal proceedings are initiated to enforce any term of this Lease, to recover any rent due under this Lease, for the breach of any covenant or condition of this Lease, or for the restitution of the Property to the Ground Lessor and/or eviction of the Tenant, the substantially prevailing party will be entitled to recover, as an element of its cost of suit and not as damages, reasonable attorney fees and costs, including, without limitation, the fees of accountants, appraisers and other professionals, whether at trial, on appeal or without resort to suit.

23.14 **Consents and Approval.** If the approval of consent of either party is required for any purpose under the terms of this Lease, such party agrees that, unless otherwise provided herein, it will not unreasonably withhold, condition or delay such approval or consent.

23.15 **Only Landlord/Tenant Relationship.** Nothing contained in this Lease will be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent partnership, joint venturer or any association between Ground Lessor and

Tenant, it being expressly understood and agreed that neither the method of computation of rent nor any act of the parties hereto will be deemed to create any relationship between Ground Lessor and Tenant other than the relationship of landlord and tenant.

23.16 **Captions.** Article and section captions are not a part hereof.

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23.17 **Time.** Time is of the essence with respect to the performance of this Lease.

23.18 **Exhibits.** The Exhibits listed below are attached and are incorporated in this Lease by this reference.

- (a) Exhibit A Property Legal Description
- (b) Exhibit B Encumbrances

LANDLORD:

THE CITY OF KENMORE, a Washington
municipal corporation

By: 
Name: Frederick C. Stouder
Title: City Manager

TENANT:

RECP/UP KENMORE, LP, a Delaware
limited partnership

By: Urban RECP Portfolio GP, LLC, a
Delaware limited liability company,
its General Partner

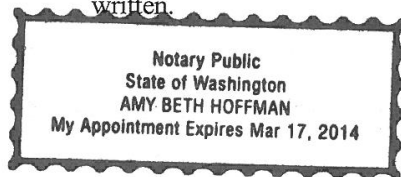
By: 
Matthew Burton, Vice President

Washington
STATE OF ~~CALIFORNIA~~)
King) ss.
COUNTY OF ~~LOS ANGELES~~)

On this 25th day of May, 2010, before me, the undersigned, a Notary Public in and for the State of California, duly commissioned and sworn personally appeared **Matthew Burton**, known to me to be the Vice President of Urban RECP Portfolio GP, LLC, the General Partner of **RECP/UP KENMORE, LP**, that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company and limited partnership, for the purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.



Amy Beth Hoffman
Signature

Amy Beth Hoffman
Print Name

Washington NOTARY PUBLIC in and for the State of
California, residing at Seattle, WA.
My commission expires 3/17/2014.

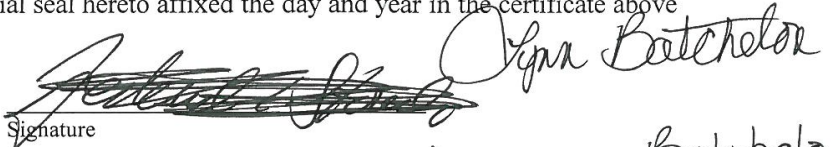
STATE OF WASHINGTON)
COUNTY OF King) ss.

On this 2nd day of JUNE, 2010, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared Frederick Stouder, known to me to be the City Manager of **THE CITY OF KENMORE**, the Washington municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.




Signature

Frederick Stouder Lynn Batchelor
Print Name
NOTARY PUBLIC in and for the State of
Washington, residing at Kirkland.
My commission expires 3/13/13.

EXHIBIT A
Legal Description

I. Order Number: 206137193

ALL OF BLOCK 13, NORTHLAKE TERRACE ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 33 OF PLATS, PAGE(S) 20 AND 21, RECORDS OF KING COUNTY, WASHINGTON;
AND THE 20-FOOT VACATED ALLEY LYING WITHIN SAID BLOCK AND A 20-FOOT VACATED ALLEY ADJOINING THE NORTHERLY LINE OF LOT 10 THEREOF; AND THAT PORTION OF VACATED KENMORE AVENUE, NOW 67TH AVENUE NORTHEAST, WHICH LIES EASTERLY OF A LINE DRAWN 390 FEET WEST OF AND DISTANT FROM THE EAST BOUNDARY LINE OF BLOCK 13 OF SAID ADDITION;

EXCEPT THE WEST 150 FEET THEREOF.

II. Order Number. 206137194

THE WEST 150 FEET OF THE FOLLOWING:

ALL OF BLOCK 13, NORTHLAKE TERRACE ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 33 OF PLATS, PAGE(S) 20 AND 21, RECORDS OF KING COUNTY, WASHINGTON;
AND THE 20-FOOT VACATED ALLEY LYING WITHIN SAID BLOCK AND A 20-FOOT VACATED ALLEY ADJOINING THE NORTHERLY LINE OF LOT 10 THEREOF; AND THAT PORTION OF VACATED KENMORE AVENUE, NOW 67TH AVENUE NORTHEAST, WHICH LIES EASTERLY OF A LINE DRAWN 390 FEET WEST OF AND DISTANT FROM THE EAST BOUNDARY LINE OF BLOCK 13 OF SAID ADDITION.

III.

III. Order Number: 206137197

PARCEL A:

THAT PORTION OF THE EAST 720 FEET OF GOVERNMENT LOT 1, SECTION 11, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING NORTH OF THE PLAT OF NORTHLAKE TERRACE ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 33 OF PLATS, PAGES 20 AND 21, IN KING COUNTY, WASHINGTON, AND LYING SOUTH OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT THAT IS 300.00 FEET SOUTH OF THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 1 AS MEASURED ALONG THE EAST LINE THEREOF; THENCE NORTH 87°44'38" WEST PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 190.34 FEET TO A POINT DESIGNATED AS POINT "A" (FOR REFERENCE PURPOSES); THENCE CONTINUE NORTH 87°44'38" WEST ALONG SAID LINE, A DISTANCE OF 529.67 FEET TO THE WEST LINE OF SAID EAST 720 FEET OF GOVERNMENT LOT 1 AND THE TERMINUS OF SAID LINE;

EXCEPT THE EAST 30 FEET THEREOF CONVEYED TO KING COUNTY FOR ROAD BY DEED RECORDED UNDER RECORDING NUMBER 2963377.

PARCEL B:

AN EASEMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED TRACT OF LAND:

BEGINNING AT A POINT THAT IS 300.00 FEET SOUTH OF THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 1 AS MEASURED ALONG THE EAST LINE THEREOF; THENCE NORTH 87°44'38" WEST PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 190.34 FEET TO A POINT DESIGNATED AS POINT "A" AND THE TRUE POINT OF BEGINNING OF THIS TRACT;

THENCE NORTH 87°44'38" WEST PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 446.01 FEET TO A POINT ON A CURVE, FROM WHICH THE RADIAL POINT OF SAID CURVE BEARS NORTH 84°37'32" WEST, A DISTANCE OF 488 FEET;

THENCE ALONG SAID CURVE TO THE LEFT, WITH A CENTRAL ANGLE OF 07°36'03", AN ARC DISTANCE OF 64.76 FEET;

THENCE NORTH 02°13'36" WEST, A DISTANCE OF 93.92 FEET;

THENCE ON A 512-FOOT RADIUS TANGENT CURVE TO THE RIGHT WITH A CENTRAL ANGLE OF 04°45'55" AN ARC DISTANCE OF 42.58 FEET;

THENCE NORTH 02°32'19" EAST, A DISTANCE OF 89.14 FEET, TO THE SOUTH RIGHT-OF-WAY LINE OF N.E. 185TH STREET AS RECORDED UNDER RECORDING NUMBER 4791700, SAID POINT IS 10.00 FEET SOUTH OF, WHEN MEASURED AT RIGHT ANGLES FROM, SAID NORTH LINE OF GOVERNMENT LOT 1;

THENCE SOUTH 02°32'19" WEST, A DISTANCE OF 89.26 FEET;

THENCE ON A 488-FOOT RADIUS TANGENT CURVE TO THE LEFT, WITH A CENTRAL ANGLE OF 04°45'55", AN ARC DISTANCE OF 40.59 FEET;

THENCE SOUTH 02°13'36" EAST, A DISTANCE OF 93.92 FEET;

THENCE ON A 512-FOOT RADIUS TANGENT CURVE TO THE RIGHT, WITH A CENTRAL ANGLE OF 03°22'02", AN ARC DISTANCE OF 30.09 FEET TO A POINT OF REVERSE CURVATURE;

THENCE ON A 25-FOOT RADIUS CURVE TO THE LEFT, WITH A CENTRAL ANGLE OF 88°53'04", AN ARC DISTANCE OF 38.78 FEET;
THENCE SOUTH 87°44'38" EAST PARALLEL WITH SAID NORTH LINE, A DISTANCE OF 287.18 FEET;
THENCE ON A 502.90-FOOT RADIUS CURVE TO THE RIGHT, WITH A CENTRAL ANGLE OF 12°32'32", AN ARC DISTANCE OF 110.09 FEET TO POINT "A" AND THE TRUE POINT OF BEGINNING.

EXHIBIT B
Encumbrances

1. Special exceptions to title described in Schedule B, Part II of the Third Commitment dated July 17, 2007 issued by Stewart Title Company under its Order No. 206173193, except for Exceptions 1, 3, 5, 6, 9, 14, 21 and 22.
2. Special exceptions to title described in Schedule B, Part II of the Third Commitment dated July 17, 2007 issued by Stewart Title Company under its Order No. 206173194, except for Exceptions 1, 3, 5, 6, 9, 14, 20 and 21.
3. Special exceptions to title described in Schedule B, Part II of the Third Commitment dated July 17, 2007 issued by Stewart Title Company under its Order No. 206173196, except for Exceptions 1, 3, 6 and 9.
4. Special exceptions to title described in Schedule B, Part II of the Third Commitment dated July 17, 2007 issued by Stewart Title Company under its Order No. 206173197, except for Exceptions 1, 3, 5, 6, 11 and 14.
5. Any and all existing tenancies encumbering the Property.

**AMENDED AND RESTATED DISPOSITION AND
DEVELOPMENT AGREEMENT**

Between

CITY OF KENMORE, a Washington municipal corporation

and

RECP/UP KENMORE, LP,
a Delaware limited partnership
as Developer

Originally Dated as of July 9, 2007. This Amended and Restated Disposition and Development
Agreement is now Dated as of _____, 20__

3557/003:03/01/102557/003:02/01/102557/003:03/01/10

AMENDED DDA2 CMP

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List of Exhibits

Exhibit A	Definitions
Exhibit B	Current Legal Description of the Downtown Site
Exhibit C-1	Conceptual Site Plan for Downtown Site (SEPA Alternative A)
Exhibit C-2	Conceptual Site Plan for Downtown Site (SEPA Alternative B)
Exhibit C-3	Conceptual Site Plan for Downtown Site (SEPA Alternative C)
Exhibit C-4	Development Parameters
Exhibit D	Phase I, Stage I, SR 522 Improvements
Exhibit E	List of Environmental Reports
Exhibit F	Bargain and Sale Deed
Exhibit G	Affordable Housing Covenant
Exhibit H	Certificate of Completion
Exhibit I	Memorandum of Disposition and Development Agreement
Exhibit J	City Mortgage
Exhibit K	Pre-Closing Ground Lease

List of Schedules

Schedule 1	Map of Downtown Site
Schedule 2	Closing and Development Schedule for Downtown Site
Schedule 3	Map Outlining Proposed Boundary Line Adjustment

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**AMENDED AND RESTATED DISPOSITION AND
DEVELOPMENT AGREEMENT**

THIS AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT is entered into as of the ____ day of _____, 20__ (the "Effective Date of this Amended and Restated Agreement") by CITY OF KENMORE, a Washington municipal corporation (the "City"), and RECP/UP KENMORE, LP, a Delaware limited partnership, as successor in interest to KENMORE PARTNERS, LLC, a Washington limited liability company ("Developer"), with reference to the following facts:

RECITALS

A. The City has planned a revitalization of its downtown area to create a high quality comprehensive integrated retail, commercial and residential anchor for downtown, create a visually attractive and pedestrian oriented space in downtown which will increase pedestrian activity downtown and directly and indirectly improve public safety in the downtown retail core, improve the economic vitality of the City, increase tax revenues, provide additional housing, create jobs, provide important public spaces and thereby enhance other City investments and assets and achieve multiple City objectives.

B. In 2001 the City adopted an integrated Comprehensive Plan and in 2003 the City adopted a Final Downtown Plan to include policies related to redevelopment of the downtown, including a mixed-use development that would serve essential public needs, including, without limitation, revitalization of the City business district, improved public infrastructure and new housing opportunities consistent with the Growth Management Act directive in the urban area of the City.

C. In furtherance of the goals and policies of the City's Comprehensive Plan and Final Downtown Plan, the City purchased approximately 9.61 acres from private property owners (Kenmore Village Shopping Center and City Hall) and from King County (North Shore Park & Ride Facility) (the "Downtown Site").

D. To develop the Downtown Site, the City established a process to select a developer of the Downtown Site consisting of (i) issuance of a request for qualifications for developer/design teams, (ii) interview of the applicants, including design presentation, and (iii) selection of the preferred development/design team.

E. As part of the selection process for the development/design team, Developer and its architect GGLO Architects, prepared conceptual design plans. Based on such conceptual plans, the City Council selected Developer as the preferred developer for the Downtown Site.

F. The City and Developer executed an Exclusive Negotiating and Plan Preparation Agreement dated June 1, 2006 to provide for the coordination of the planning, design and development of the Downtown Site; for the possible acquisition by Developer of all of the

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Downtown Site and for the Developer to identify the cost and potential sources of financing for the development of improvements within the Downtown Site.

G. Developer initially prepared three conceptual design plans for the overall Downtown Site development reflecting each of the three alternatives which were evaluated by the City as part of the City's SEPA process and are attached to this Agreement as Exhibit C-1 through C-3. Developer has recently prepared a fourth plan, which is attached as Exhibit C-4 which is also incorporated herein. (The design plans set forth in Exhibits C-1 through and including C-4 are referred to herein as the "Downtown Conceptual Plans.")

H. The City has determined that the real property described on Exhibit B attached to this Agreement, and shown on the map annexed hereto as Schedule 1 (the "Property") is surplus to its needs. In selling this surplus Property, the City intends to limit future use and development options for the Property by having the Property developed in a manner that is consistent with its vision of downtown and that Developer thereafter design, develop, permit, finance and construct a mixed-use development on the Property in accordance with the Development Parameters (as defined in Section 2.1).

I. The goal of the City and the Developer is for the Developer to develop the Property as an important community resource in a commercially viable manner that is consistent with and furthers the following goals of the City as contained within the Comprehensive Plan and the Final Downtown Plan: (i) create a high quality comprehensive integrated retail, commercial and residential anchor for downtown Kenmore; (ii) create a special identity and gathering place for the City and its residents with access to downtown businesses; (iii) create a visually attractive and pedestrian oriented space in the downtown area; (iv) enhance public security and provide City residents with additional housing opportunities through the introduction of multi-family residential buildings in downtown; and (v) revitalize the business district by creating a development which will improve the financial stability and general economic vitality of the City, preserve jobs, attract additional private investment in downtown and generate additional sales and property tax revenue for the City.

J. A Disposition and Development Agreement was originally entered into by the City and Developer on July 9, 2007 and subsequently amended pursuant to a First Amendment dated January 7, 2008, a Second Amendment dated March 24, 2008, a Third Amendment dated May 20, 2008, a Fourth Amendment dated November 14, 2008, a Fifth Amendment dated February 2009, and a Sixth Amendment dated June 15, 2009 (as amended, the "Agreement"). Kenmore Partners, LLC assigned all of its rights and obligations in the Agreement to REC/UP Kenmore, LP. The Agreement is also subject to a forbearance agreement between the parties as set forth in Kenmore Agreement No. 09-C817 dated October 26, 2009. The City and Developer now desire to make additional amendments to the Agreement and have prepared and now enter into this Amended and Restated Agreement to effect such changes and to confirm and restate the entire agreement between the City and Developer relating to the Property.

K. ~~Since entering into the Agreement, Developer has been, and is, as of the Effective Date of this Amended and Restated Agreement, an entity partially affiliate beneficially owned, and directly or indirectly, controlled by the owners of~~ Urban Partners LLC, an experienced real

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estate planning, investment, development and management firm. ~~In addition, Developer also is partially owned by an affiliate of~~ ~~has secured and continues to hold a commitment from~~ Real Estate Capital Partners, a highly capitalized real estate investment company, ~~which has agreed to provide financial assistance to Developer in connection with the development of the Downtown Site.~~ ~~Developer~~ and has retained GGLO, LLC as the Project Architect.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and in order to fulfill the foregoing objectives, the parties agree as follows:

1. Incorporation of Recitals; Definitions. Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein. Capitalized terms used herein shall have the meaning set forth in the applicable section shown in Exhibit A attached hereto and by this reference incorporated herein.

2. Description of Downtown Site Development.

2.1 Description of Overall Downtown Site. The Property included within the Downtown Site will consist of approximately 9.61 acres of land in the northwest quadrant of downtown Kenmore, less frontage along NE 181st Street and 68th Avenue N.E. The Downtown Site will consist of a mixed use development consistent in all material respects with one of the Downtown Conceptual Plans attached hereto as Exhibits C-1, C-2, C-3 and C-4. The Downtown Site will include not less than 300 for sale and/or for rent residential units of which not less than 100 will be designated as affordable units (one of which may be occupied by a property manager) pursuant to the Kenmore Municipal Code and approximately 23,000 square feet of a community event and central gathering open space for the Downtown Site Project, of which 14,000 square feet will be reserved solely for such use. In addition, Developer will provide a community garden (p-patch) for residents of the Downtown Site Project. The Downtown Site will also include not less than 77,200 square feet of retail and restaurant space and a mix of structured and surface parking totaling not less than the number of parking spaces required under the SEPA documents described in Section 3.2, plus a minimum of 10 on-street parking spaces (calculated assuming not less than (a) 1.21 parking stalls per market rate or other affordable residential unit, (b) .5 parking stalls per senior affordable residential unit, (c) 0.75 parking stalls per family affordable unit, (d) 2.97 parking stalls per 1,000 square feet of general retail space and (e) 2.48 parking stalls per 1,000 square feet of grocery retail space). Some ground level residential units may be suitable for live/work occupancy. Three of the Downtown Conceptual Plans attached to this Agreement as Exhibits C-1 (Alternative A), Exhibit C-2 (Alternative B) and Exhibit C-3 (Alternative C) constitute the three development alternatives which were analyzed by the City as part of the SEPA process more particularly described in Section 3.2 below. The alternatives visually depicted on Exhibit C-4 constitute the minimum size project that Developer can build on the Downtown Site pursuant to the requirements of this Agreement. Each alternative analyzed during the SEPA process constitutes a different density of development and contains a different mix of uses, and correspondingly different building heights, parking requirements and open space considerations. For the purposes of this

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Agreement, the minimum requirements for the development of the Downtown Site described in this Section 2.1 are the alternatives visually depicted on the Downtown Conceptual Plans attached hereto as Exhibit C-4, and will hereinafter be referred to as the "Development Parameters." The development to be constructed on the Property is sometimes referred to in this Agreement as the "Downtown Site Project."

2.2 Description of Downtown Site by Parcels; Phasing of Development. The Downtown Site Project is intended to consist of a series of well coordinated private developments to be built on each of the separate parcels constituting the Property. The Property is intended to be constructed in phases (each, a "Phase") as described below.

2.2.1 Phase I. The Phase I Project will consist of up to 200 residential units, 100 units of which shall be affordable housing units, approximately 23,000 square feet of a community event and central gathering open space, related parking spaces as required under Section 2.1 of this Agreement based on the density of development and mix of uses (the "Required Parking Spaces") and a minimum of 71,200 square feet of retail and restaurant space consistent with the Downtown Conceptual Plans. The portion of the Property to be purchased and developed as Phase I will be dependent on the final configuration of Phase I.

2.2.2 Phase II and Phase III. The Phase II Project and the Phase III project will consist of 100 – 300 residential units and Required Parking Spaces. To the extent Phase I does not include the full 77,200 square feet of retail and restaurant space required for the Downtown Site Project, the remaining required space will be included in Phase II and/or Phase III.

Developer may change the mix of affordable housing to include a mix of senior and family affordable units with the prior written consent of the City which consent shall not be unreasonably withheld so long as the overall number of affordable housing units is not reduced and the proposed mix of affordable housing unit types satisfies all parking and other Kenmore Municipal Code requirements. The mix of affordable housing units, as approved by the City is hereinafter referred to as the "Affordable Housing Units." Developer shall also evaluate the feasibility of and make a good faith effort to include some condominium units for sale at prices and to residents who satisfy the requirements of the Affordable Housing Covenant (as hereinafter defined). Any such for sale affordable housing condominium units which are constructed by Developer shall be included in determining whether Developer has satisfied the Development Parameters. If Developer elects to develop more than the minimum Development Parameters for any Phase, add a different use such as office, the number and mix of housing units, mix of uses, height and articulation of buildings, open space, parking and other ancillary improvements and requirements will be determined in accordance with the applicable provisions of the Kenmore Municipal Code, and may require additional SEPA review if the development exceeds the alternatives considered as part of the City's SEPA review process.

2.2.3 Street and Sidewalk Improvements. Certain capital improvements in the SR 522 Corridor are depicted and shown generally on Exhibit D attached hereto ("Phase I, Stage I, SR 522 Improvements"). The City and Developer worked together in coordinating the design and construction of the Phase I, Stage I, SR 522 Improvements, including construction of

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half street improvements to the streets abutting the Downtown Site Project. To the extent such improvements have not yet been completed, the City reserves the right to construct and install all or a portion of the Phase I, Stage I, SR 522 Improvements, and to change the final design, timing of construction, and location of such Phase I, Stage I, SR 522 Improvements. At Closing of a Phase, the City shall reserve from the sale of the Property any right of way that is necessary for construction, operation and maintenance of the Phase I, Stage I, SR 522 Improvements. The right of way reservations shall not result in a reduction of the Purchase Price. After the Closing of any Phase, Developer shall dedicate to the City, without compensation, right of way required by the City for the Phase I, Stage I, SR 522 Improvements. If construction of the Downtown Site Project requires removal and reinstallation or reconstruction of the Stage I, Phase I, SR 522 Improvements, Developer shall remove, reinstall and reconstruct them at its own cost and expense.

2.2.4 Phased Development. The parties understand and agree that the description of the improvements to be built on the various parcels and the timing of development on the various parcels is subject to change based upon a variety of factors, including, but not limited to, the timing of termination or expiration of leases currently encumbering the Property, the City's vacation of its occupancy of City Hall, and tenant interest in the proposed retail, office and commercial space to be developed as part of the Downtown Site Project. Developer will have the right to combine Phase II and Phase III into a single Phase for both purchase and development purposes. The dates for purchase and development milestones for the entire Downtown Site Project (including phasing of development on individual parcels) is set forth on Schedule 2 (the "Project Schedule").

2.3 Minimum Design Criteria. The City and Developer agree that design and development of the Downtown Site Project shall be consistent with one of the Downtown Conceptual Plans attached to this Agreement as Exhibits C-1 through C-4, together with the Integrated Comprehensive Plan and Final Environmental Impact Statement adopted March 26, 2001 and issued April 4, 2001; the Kenmore Downtown Plan and Environmental Impact Statement Addendum adopted April 4, 2003; the Kenmore Village-by-the-Lake Environmental Impact Statement Addendum issued April 17, 2007 and the Kenmore Municipal Code (the "Minimum Criteria"). In the event of any discrepancies among the various documents referred to in this Section 2.3, the Kenmore Municipal Code regulations with regard to height of buildings on the Downtown Site shall prevail.

2.4 Disclaimer; City Not Liable for Construction of Downtown Site. Notwithstanding any provision of this Agreement to the contrary, the City is under no obligation to, nor shall it construct or supervise the construction of the private development project within the Downtown Site Project. It is understood and agreed that City's right to approve the schematic design documents and Building Permit Documents (as defined in Section 13) for the Downtown Site as provided in this Agreement is for the sole purpose of protecting its rights under this Agreement and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or any obligation on City to ensure that work or materials are in compliance with approved development plans, or any building requirement imposed by any governmental agency. City is under no obligation or duty and disclaims all responsibility to pay for the cost of construction of the private development projects within the Downtown Site, the

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cost of which is and shall at all times remain the sole liability and responsibility of Developer. Nothing contained herein is intended to constitute a waiver of the City's regulatory authority as the permitting jurisdiction, nor a waiver of its rights to inspect ongoing construction to determine that such construction is in accordance with the terms and conditions of development permits issued by the City. NOTICE IS HEREBY GIVEN THAT CITY WILL NOT BE LIABLE FOR ANY LABOR, SERVICES, MATERIALS OR EQUIPMENT FURNISHED OR TO BE FURNISHED TO DEVELOPER FOR CONSTRUCTION OF THE PRIVATE DEVELOPMENT PROJECTS WITHIN THE DOWNTOWN SITE, OR ANYONE HOLDING AN INTEREST IN THE PROPERTY (OR ANY PART THEREOF) THROUGH OR UNDER DEVELOPER.

3. Conceptual Plan; Land Use Permits and Conditions.

3.1 Conceptual Plans. Attached hereto as Exhibits C-1, C-2, C-3, and C-4 are the various Downtown Conceptual Plans prepared by Developer. Exhibits C-1, C-2, and C-3 were evaluated by City in connection with its SEPA review process. Any references in this Agreement to the Downtown Conceptual Plans shall mean one of the exhibits attached to this Agreement as Exhibits C-1 through C-4. Additional land may not be added to the Downtown Site or become a part of the Downtown Site Project without the prior written approval of the City.

3.2 SEPA. In compliance with the State Environmental Policy Act ("SEPA"), the City conducted environmental review of the proposed development of the Downtown Site Project and the sale of the Property to Developer. The environmental review resulted in the issuance of an addendum to the City's Integrated Comprehensive Plan and Final Environmental Impact Statement and Downtown Plan EIS Addendum ("2007 Addendum"). The proposals in the three conceptual design plans for the Downtown Site Project, as set forth in Exhibits C-1, C-2 and C-3, are included within the proposed development that was analyzed and assessed in the 2007 Addendum. The City and Developer agree that SEPA review for the three conceptual design plans for the Downtown Site Project set forth in Exhibits C-1, C-2 and C-3 have been adequately reviewed and analyzed in the 2007 Addendum, together with its incorporated documents. Developer has determined that Exhibit C-4 constitutes substantially the same proposal approved by the City under the Agreement, and that the SEPA determinations and documents referred to in Sections 2.3 and this 3.2 adequately review and analyze the environmental impact of the Downtown Site development as described in the Downtown Conceptual Plans attached hereto as Exhibit C-4. If the City requires additional information and data from the Developer regarding the proposal set forth in Exhibit C-4 to perform a SEPA review or for any other reason, Developer shall provide such information and data as soon as reasonably possible. The City shall have the right to perform additional SEPA review for Exhibit C-4 to analyze environmental impacts of the Downtown Site development that have not been previously identified in the SEPA documents referenced in Section 2.3 and this Section 3.2. Developer acknowledges that the City also may require additional SEPA review for the Downtown Site Project if Developer adds more parcels or if the three conceptual designs are changed and result in adverse environmental impacts that have not been previously identified and analyzed in the 2007 Addendum. Developer reserves the right to challenge any mitigation that is required pursuant to such additional SEPA review.

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3.3 Future Local Improvement District Assessments. Developer acknowledges that the City is considering future infrastructure improvements which will confer special benefits on property located in one or more of the four quadrants in downtown Kenmore including the Property. Developer agrees not to protest the future formation of a local improvement district commenced by the City in downtown Kenmore and must sign a petition for such a local improvement district if commenced by property owner petition; provided that the assessments under such local improvement district are levied against such properties which will benefit from the improvements by a method calculated to fairly reflect the benefit of the planned improvements to each such property. Developer shall have the same rights as any other contract vendee of property to object to the amount of any local improvement district assessment and the City shall not challenge Developer's standing to raise any such objections.

3.4 Boundary Line Adjustment; Land Use Permits. The City shall prepare, process, approve and record a boundary line adjustment (the "Boundary Line Adjustment") necessary to establish the three Phases of the Property. Developer shall be responsible for all third party costs (including normal City processing fees and recording costs) associated with the preparation of the Boundary Line Adjustment including, but not limited to, surveying and title work necessary to prepare the Boundary Line Adjustment. Schedule 3 attached to this Agreement indicates the currently contemplated reconfiguration of the Property for the three Phases. Developer and the City acknowledge that since buildings may not straddle the boundary lines of legal lots, the proposed Boundary Line Adjustment shown on Schedule 3 cannot be recorded unless and until Developer demolishes all existing buildings and other improvements located on the Downtown Site that would straddle the boundaries of the legal lots proposed to be created by the Boundary Line Adjustment. If such buildings have not been demolished prior to the Closing Date for Phase I, the City and Developer shall agree on a revision to the proposed Boundary Line Adjustment that creates legal lots in compliance with all Requirements of Law and Developer may, in its discretion, propose further revisions to the Boundary Line Adjustment following Closing once existing improvements have been demolished. The City shall review, and process boundary line adjustments and required permits for the construction of the Downtown Site Project including, but not limited to, commercial site development permits, grading permits, building permits and temporary and final certificates of occupancy, all in accordance with the Kenmore Municipal Code and applicable regulations of the City.

3.5 Vesting; Impact Fees. The Downtown Site Project shall be vested to the City ordinances and regulations existing on the Effective Date of this Amended and Restated Agreement; provided, however, that the City reserves the authority to amend such City ordinances and regulations to the extent required by a serious threat to human health and safety as provided in RCW 36.70B.170. Developer shall pay school impact fees, road impact fees and park impact fees for the three Phases of the Downtown Site Project. The percentage of impact fees to be paid for each Phase shall be determined by Developer and the City prior to the Closing of Phase I. The impact fee rates for all three Phases of the Downtown Site Project shall be the rates in effect on the Effective Date of this Amended and Restated Agreement; provided, that if the schedule for completion of a Phase of the Downtown Site Project is delayed by one year or more, the impact fees for that Phase shall be calculated based on the impact fee rates in effect on the date of payment for that Phase. Except as otherwise allowed under the Kenmore Municipal Code, the impact fees shall be paid at the issuance of the first building permit for each Phase.

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Developer shall not apply for credits for school or road impact fees. Developer may apply for a credit for park impact fees, pursuant to the procedure set forth in Section 18.100.050 of the Kenmore Municipal Code. Developer acknowledges that the 2009 King County Surface Water Design Manual standards are now in effect and are currently applicable to the Downtown Site Project having now replaced the 1998 Surface Water Design Manual.

3.6 Kenmore Municipal Code Amendments.

3.6.1 Traffic Impact Fees. As contemplated by the Agreement, the City has adopted Ordinance 07-0273 amending Kenmore Municipal Code Section 18.100.030, to permit the payment of certain impact fees applicable to the Property in installments, which Code Section is acceptable to Developer. The City's traffic impact fee regulations are generally set forth within Kenmore Municipal Code Chapter 18.100. Ordinance 08-0292 adopted a new 2008 Road Impact Fee study which established new impact fees. Kenmore Municipal Code Section 18.100.020.EE refers to the new study and Resolution 09-174 adopted the City's 2010 Fee Schedule. Kenmore Municipal Code Section 18.100.110 allows the City to adjust the impact fee rates annually based on the Consumer Price Index-W.

3.6.2 Availability of Property Tax Abatement for Affordable Multifamily Housing. As contemplated by the Agreement the City also adopted Ordinance 07-0271 adding a new chapter to the Kenmore Municipal Code titled "Multifamily Housing Property Tax Exemption," which Ordinance and chapter are acceptable to Developer.

3.7 City Construction of Phase I, Stage I, SR 522 Improvements. The City has undertaken the Phase I, Stage I, SR 522 Improvement work pursuant to a design and on a schedule acceptable to Developer. Significant portions of the Phase I, Stage I, SR 522 Improvement work have now been completed and Developer has agreed to pay to the City an additional amount not to exceed \$75,000.00, concurrently with its execution and delivery of this Amended and Restated Agreement, to reimburse the City for certain portions of the Phase I, Stage I, SR 522 Improvements. The City and Developer also entered into a separate Contribution Agreement relating to Developer's obligation to pay certain amounts to City for certain revisions to the Phase I, Stage I, SR 522 Improvement design.

4. Sale of Property; Purchase Price.

4.1 Purchase Price. Conditioned upon Developer's timely payment of the Deposits described in Section 4.2.1 below, the City agrees to sell and Developer agrees to purchase the Property on the terms and conditions set forth in this Agreement. The purchase price for the Property ("Purchase Price") will be as determined under this Section 4.1. The Property may be purchased in Phases and the Purchase Price for each Phase will be determined ~~for based on the actual square feet of land in each Phase.~~ The Purchase Price for the Property purchased at each Closing will be ~~determined by multiplying the square feet in the land to be purchased at the applicable Closing by the its~~ Fair Market Value of the land per square foot on the applicable Closing Date. For the purposes of this Amended and Restated Agreement, the term "Fair Market Value" means the ~~pricerate per square foot~~ that a willing unrelated buyer would pay and a willing unrelated seller would accept in an arms-length transaction for the

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purchase and sale of property comparable to the applicable Phase. The Fair Market Value and the Purchase Price of each Phase will be determined as follows:

4.1.1 Meeting to Agree on Purchase Price. No less than one hundred twenty (120) days before Closing of any Phase, the City and Developer shall meet and attempt to agree on the Fair Market Value and the resultant Purchase Price for the applicable Phase. If the parties have not agreed on the Purchase Price for the applicable Phase within twenty (20) days after the City and Developer first meet to discuss the Purchase Price, then, unless otherwise agreed in writing by the City and Developer, the matter shall be submitted to arbitration in accordance with the terms of the following paragraphs. The last day of such twenty (20) day period (as the same may be extended by the written agreement of the parties) is the "Arbitration Commencement Date".

4.1.2 Selection of Arbitrator. The arbitrator shall be an MAI real estate appraiser who has been active for at least ten (10) years in the appraisal of mixed retail, commercial and residential projects in the Kenmore, Washington area. If the City and Developer are unable to agree on the arbitrator within thirty (30) days after the Arbitration Commencement Date, each shall select an appraiser who shall be qualified under the criteria set forth above, and so notify the other party in writing within ten (10) days after the end of such thirty (30) day period. The two appraisers so chosen by the parties shall then appoint an arbitrator qualified under the criteria set forth above within ten (10) days after the date of the selection of the last appraiser selected by either the City or the Developer. If the two appraisers so chosen by the parties are unable to agree on the arbitrator within such ten (10) day period, the arbitrator will be appointed by the presiding judge of King County Superior Court upon the application of either party. If one party fails to timely select its appraiser and so notify the other party in writing within the foregoing ten (10) day period, and the other party timely selects its appraiser, then the appraiser selected by the other party shall be the arbitrator for determining the Fair Market Value and the Purchase Price for the applicable Phase.

4.1.3 Determination of Purchase Price. Within thirty (30) days after the selection of the arbitrator pursuant to Section 4.1.2 above, the arbitrator shall determine the Fair Market Value Purchase Price for the applicable Phase by determining the Fair Market Value of the land per square foot for the applicable Phase and multiplying it by the square feet in the applicable Phase.

4.1.4 Procedure. Both parties may submit any information to the arbitrator for her or his consideration, with copies to the other party. The arbitrator will have the right to review comparable land sales and consult experts and competent authorities for factual information or evidence pertaining to the determination of the Fair Market Value and the Purchase Price for the applicable Phase. The arbitrator shall render her or his decision by written notice to each party. The determination of the arbitrator will be final and binding upon the City and Developer. The cost of the arbitration will be shared equally between the parties.

4.2 Payment of Purchase Price. The Purchase Price shall be paid as follows:

4.2.1 Earnest Money Deposits. Developer previously delivered to the City Two Hundred Fifty Thousand and No/100 Dollars (\$250,000) (the "Initial Deposit"). Developer has agreed to deliver directly to the City additional payments of Fifty Thousand

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Dollars (\$50,000) beginning on December 15, 2010~~the first anniversary of the Effective Date of this Amended and Restated Agreement~~ and on each December 15th thereafter~~subsequent anniversary of the Effective Date of this Amended and Restated Agreement~~ (each a "Subsequent Deposit") until the earlier of the date that this Agreement expires or is terminated or the date on which Developer acquires all of the Property. (The Initial Deposit and any and all Subsequent Deposits, when paid to the City, shall be collectively referred to herein as the "Deposits.") All Deposits shall be applicable towards the Purchase Price for the portion of the Property purchased by Developer for Phase III. Since Developer did not elect to terminate its obligations under this Agreement prior to the waiver or expiration of the Due Diligence Period under the Agreement and all of the City's obligations under Sections 3.6 and 3.7 of the Agreement have been satisfied, all Deposits are and shall be non-refundable unless the purchase of the Property in Phase III fails to close as a result of a default by the City under this Agreement or the failure of any of Developer's conditions to Closing under this Amended and Restated Agreement, in which case all Deposits will be refunded. In the event Developer terminates its obligations under this Agreement as otherwise permitted under this Agreement, Developer shall deliver to City the originals of all conceptual and schematic design documents related to the Property then in existence for no additional consideration, this Agreement shall terminate and neither party hereto shall have any further rights, duties or obligations under this Agreement except as otherwise expressly provided herein.

4.2.2 Balance Payable in Cash. The Purchase Price applicable to the Property being acquired for each Phase will be payable in cash or immediately available funds upon Closing, subject to the application of the Deposits to the Purchase Price for the Property being purchased for Phase III.

4.2.3 No Interest on the Deposits. The City does not and shall not have any obligation to invest all or any portion of any of the Deposits in any trust account or any other account, nor shall Developer be entitled to any interest on the Deposits.

4.3 Deposits as Liquidated Damages. IN THE EVENT THE SALE OF THE PROPERTY IS NOT CONSUMMATED BECAUSE OF A DEFAULT UNDER THIS AGREEMENT SOLELY ON THE PART OF DEVELOPER AND, PROVIDED THE CITY IS NOT IN DEFAULT UNDER THIS AGREEMENT, THE DEPOSITS SHALL BE RETAINED BY THE CITY AS LIQUIDATED DAMAGES. THE PARTIES ACKNOWLEDGE THAT THE CITY'S ACTUAL DAMAGES IN THE EVENT OF DEFAULT BY DEVELOPER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR SIGNATURES BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSITS HAVE BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF THE CITY'S DAMAGES AND AS THE CITY'S EXCLUSIVE REMEDY AGAINST DEVELOPER IN THE EVENT DEVELOPER DEFAULTS IN ITS AGREEMENT TO PURCHASE THE PROPERTY.

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City: CITY OF KENMORE, a Washington municipal corporation

By: _____
Name: _____
Title: _____

Developer: RECP/UP KENMORE, LP, a Delaware limited partnership

By: Urban RECP Portfolio GP, LLC, a Delaware limited liability company, its General Partner

By: _____
Matthew Burton, Vice President

4.4 Due Diligence Period. Developer has completed its due diligence investigation of the Property and delivered a written notice to City and Escrow Agent stating that Developer has elected to proceed with the purchase of the Property and, subject to the conditions set forth otherwise in this Amended and Restated Agreement, Developer has agreed to accept the Property in its "AS IS" condition and state of repair, and has waived its financial feasibility contingency.

4.4.1 Intentionally Deleted.

4.4.2 Environmental Condition of the Property. The City expressly makes no representation or warranty regarding the environmental condition of the Property or the presence or absence thereon of substances deemed to be hazardous or toxic under any Federal, state or local environmental law, ordinance or regulation ("Hazardous Substances"). Attached hereto as Exhibit E and by this reference incorporated herein are full and complete copies of environmental reports and studies regarding the environmental condition of the Property (the "Environmental Reports") which have previously been provided to Developer. The City makes no representation or warranty about the accuracy or completeness of the Environmental Reports. Developer shall have the right to conduct additional environmental testing of the Property at its sole cost and expense.

4.4.3 Water Main. Developer and the City acknowledge that an existing water main is located underneath the Property which water main may be abandoned in place. If Developer elects to relocate the water main, Developer shall pay all costs associated with such removal including, but not limited to, any costs incurred in connection with the removal of asbestos or any other Hazardous Substances arising from the relocation of the water main.

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4.4.4 Survey. Developer, at its sole cost and expense, shall have the right to obtain an ALTA survey of the Downtown Site ("Survey").

4.5 Acceleration of Closing. The City agrees to work in good faith with Developer in the event Developer notifies City in writing of its desire to accelerate the Closing Date for the purchase of the Property or any Phase thereof set forth in Section 10 so long as all conditions precedent to City's obligation to sell the Property to Developer have been satisfied.

4.6 Security; City Mortgage. The obligations of Developer under this Agreement after a Closing will be secured by a deed of trust in the form attached hereto as Exhibit J (the "City Mortgage"). Developer shall also assign to City the architect's agreement(s) and construction contract(s) for the construction of the buildings proposed to be constructed as part of the Downtown Site Project as additional security for the performance of Developer's obligations under this Agreement, which assignments shall be in form and substance satisfactory to Developer and City and shall be consented to by the architects and contractors, respectively. The City Mortgage shall require partial releases of the City Mortgage from the Downtown Site Project as individual condominium units are sold. If requested by Construction Lender (as hereinafter defined), City will subordinate the City Mortgage to the Construction Mortgage in favor of the Construction Lender. The Subordination Agreement will be on terms and conditions reasonably acceptable to City and will contain commercially reasonable terms required by institutional lenders on commercial real estate projects. The Subordination Agreement will include the subordination of the assignments of the architect's agreement(s) and construction contract(s). City shall have the right to foreclose the City Mortgage upon the occurrence of an Event of Default by Developer as defined in Section 21 of this Agreement, provided that any written notice required under this Agreement has been given and any cure period applicable to such Event of Default has expired. City will release the City Mortgage of record upon recordation of a Certificate of Completion as provided in Section 18 of this Agreement with respect to the Downtown Site Project or any completed Phase thereof.

4.7 City Hall Parcel. City Hall for the City is currently located on that parcel of the Property described as Parcel A in Order No. ~~981780206137196~~ on Exhibit B attached to the Agreement (the "City Hall Parcel"). The City intends on relocating City Hall to a new building currently under construction and so has leased ~~a portion of~~ the City Hall Parcel to the United States Post Office for use as a branch post office serving the public directly (the "Post Office Lease"). Developer has no objections to the Post Office Lease. At a Closing, Developer will have the right to elect either (a) not to purchase the City Hall Parcel, but to exclude the City Hall Parcel, or a portion of the City Hall Parcel (if permitted), from the Property being purchased under the Agreement, or (b) to purchase the City Hall Parcel subject to the Post Office Lease. If Developer elects not to purchase the City Hall Parcel or elects to purchase a portion of the City Hall parcel (if permitted), the City and Developer shall agree on a revision to the proposed Boundary Line Adjustment (as described in Section 3.4 of this Agreement and Schedule 3 attached to this Agreement) that creates, if possible, legal lots in compliance with all Requirements of Law, that will not cause a violation of the Post Office Lease, and will create lots that are configured such that Developer will be able to develop the Downtown Site Project in three Phases, as contemplated under the Agreement, without the City Hall Parcel (or the portion of the City Hall Parcel Developer has elected not to purchase).

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4.8 Escrow Agent. Stewart Title Guaranty Company in Seattle, Washington in its capacity as Escrow Agent and in its capacity as title insurer ("Title Company") has been designated as Escrow Agent and Title Company by mutual agreement of the parties.

5. Title to Property.

5.1 Title to Property. City shall execute and deliver to Developer at Closing a bargain and sale deed in the form attached hereto as Exhibit F ("Deed") conveying fee title to the Property subject to the Permitted Exceptions determined in accordance with Sections 5.2 and 5.3 below.

5.2 Title Insurance. On the Closing Date, City shall cause the Title Company to issue Developer an Extended Coverage Owner's Policy of Title Insurance (the "Title Policy"), with liability in the amount of the Purchase Price insuring good and marketable fee simple title to the Property, as applicable, in Developer against any loss or damage by reason of defects in City's title to the Property other than the Permitted Exceptions. Developer may, at its sole cost and expense, request endorsements to the Title Policy, but the availability of such endorsements shall not be a condition precedent to Closing. If requested by City, the Title Company shall also issue City an ALTA Extended Coverage Mortgagee's Policy of Title Insurance (the "City Title Policy") with liability in an amount determined by City insuring the City Mortgage on the Downtown Project Site subject only to the Permitted Exceptions and any security instrument to which the City is required to subordinate under this Agreement.

5.3 Title Review. Developer has reviewed preliminary commitments for title insurance issued by Title Company for the four (4) existing parcels comprising the Property, each titled the "Third Commitment" and each dated July 17, 2007, under Order Nos. 206137193, 206137194, 206137196 and 206137197 together with updated commitments, each dated March 16, 2010 under Orders Nos. 981780, 981781, 981783 and 981785 (collectively the "Title Commitment") and accepts the matters and exceptions appearing in the Title Commitment; provided, however, the City has agreed to cause the Title Company to remove as special exceptions from the final Title Policy only those matters set forth in Schedule 4 attached to this Agreement. All other matters appearing in the Title Commitment shall be Permitted Exceptions.

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5.3.1 Developer's Notice. If Developer is notified of any new title exceptions through a supplement to the Title Commitment (each a "Supplement to the Title Commitment"), Developer shall have thirty (30) days from its receipt of a Supplement to the Title Commitment to notify the City of its approval or disapproval of the new title exceptions described in the Supplement to the Title Commitment. Failure to deliver such notice by that date shall constitute Developer's approval of the new exceptions in the Supplement to the Title Commitment. Developer shall not be entitled to disapprove the general exceptions (other than those to be removed upon issuance of an extended coverage owner's policy) or any exceptions created by or on the account of Developer or exceptions approved by Developer and recorded in connection with the proposed redevelopment of the Downtown Site. Covenants, conditions, restrictions, reservations, rights-of-way and easements presently of record which were previously approved by or deemed approved by Developer under this Agreement, non-delinquent real estate taxes, special assessments and local improvement district and utility local improvement district

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assessments or mitigation agreements in lieu thereof now existing or hereafter levied against the Property, the CC&Rs, the City Mortgage, and the Affordable Housing Covenant to be recorded in favor of City with respect to the Affordable Housing Units (including any affordable for sale condominium units), shall be deemed Permitted Exceptions and shall not be objected to by the Developer. Notwithstanding any other provision of this Agreement to the contrary, the City shall not record any mortgage or deed of trust against the Property which would not be released of record as of the Closing Date (other than the City Mortgage) without approval of Developer. Exceptions deemed approved pursuant to this Section 5.3.1 or not disapproved by Developer within the time period set forth above shall be "Permitted Exceptions."

5.3.2 City's Notice. The City shall have ten (10) days after receipt of Developer's notification in which to notify Developer whether or not it elects to cure or remove any of the disapproved exceptions of which the City receives timely notice pursuant to Section 5.3.1. The City's failure to so notify Developer shall constitute the City's election to not remove all such exceptions. The City shall remove all exceptions it elects to remove on or before the applicable Closing Date for the Phase affected by such exception.

5.3.3 Developer's Election. If the City does not elect to remove all exceptions disapproved by Developer under Section 5.3.1, Developer may elect to terminate this Agreement by written notice to the City given within ten (10) days following the City's notice, in which event Escrow Agent or City, as applicable, will return the Deposits to Developer, this Agreement shall automatically terminate, Developer shall deliver to City the originals of all conceptual and schematic design documents related to the Property then in existence for no additional consideration and except as otherwise expressly provided herein, neither party hereto shall have any further rights or obligations under this Agreement. If Developer does not elect to terminate this Agreement within the time frame set forth herein, disapproved exceptions that the City has not elected to remove shall become Permitted Exceptions for the Property.

5.3.4 Intentionally Deleted.

5.3.5 Title Not Insurable. If title is not insurable subject only to the Permitted Exceptions determined in accordance with this Agreement, Developer may elect to proceed with the Closing despite such noninsurability thereby, accepting any such matters as Permitted Exceptions, or Developer may terminate this Agreement by written notice to the City in which event this Agreement shall automatically terminate, Escrow Agent or the City, as applicable, will return the Deposits to Developer, Developer shall deliver to City the originals of all conceptual and schematic design documents related to the Property then in existence for no additional consideration and except as otherwise expressly provided herein, neither party hereto shall have any further rights or obligations under this Agreement.

6. "AS-IS" Sale. By electing to proceed with the purchase of the Property, Developer acknowledges that it has had an opportunity to and has conducted a thorough investigation of the Property and is in all respects knowledgeable and familiar with the present condition and state of repair of the Property. Developer acknowledges that it is concluding the purchase of the Property based solely upon Developer's inspection and investigation of the Property and that the Property is being sold to Developer in an "AS-IS" condition and state of

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repair, and with all faults, of any kind or nature and without any representations or warranties, express, implied or statutory. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, CITY MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE PHYSICAL CONDITION OR VALUE OF THE PROPERTY, THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES ON THE PROPERTY, SOILS CONDITIONS, OR OTHER PHYSICAL CHARACTERISTIC OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR DEVELOPER'S INTENDED DEVELOPMENT. CITY MAKES NO REPRESENTATION WHATSOEVER REGARDING THE FINANCIAL FEASIBILITY OF THE PROPOSED REDEVELOPMENT OF THE PROPERTY. Upon recording of the Deed to the Property, Developer shall be deemed to have accepted the Property in its "AS-IS, WHERE-IS" condition and state of repair and does hereby waive and release the City, its officials, officers, employees and agents from any and all claims for damages, losses, liabilities, costs and expense whatsoever (including, without limitation, reasonable attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, which may arise on account of or in any way arising out of or in connection with the physical or environmental condition of the Property or any Requirements of Law applicable thereto.

7. Operation of the Property Pending Closing.

7.1 Operations Pending Closing. Prior to Closing, Developer shall be granted possession of a portion of the Property pursuant to a Ground Lease between the City and RECP/UP Kenmore, LP, a Delaware limited partnership, an Affiliate of Developer, in the form attached hereto as Exhibit K (the "Pre-Closing Ground Lease"), to be entered into concurrently with this Amended and Restated Agreement. ~~The Pre-Closing Ground Lease will provide, among other things, that (i) the Developer shall pay rent in the amount of \$1.00 per year, (ii) to the extent the Developer is unable to lease at least twenty-five percent (25%) of the square footage of the buildings located on the Property by April 30, 2010, the City will pay the real estate taxes for the Property due and payable during calendar year 2010, (iii) Developer will pay all other operating costs of the Property, (iv) Developer will be permitted to enter into long term leases with tenants for the Property with rights to relocate tenants within the Downtown Site Project, and (v) Developer will be permitted to demolish the buildings on the Property.~~ To the extent any portion of the Property is not made subject to the Pre-Closing Ground Lease ("Non-Leased Property"), the City shall have the right to manage and operate the Non-Leased Property as it determines in its reasonable discretion, and shall have the right to retain all rents or other income paid in connection therewith; provided, however that (a) the City shall not construct any buildings or install any other permanent improvements on any Non-Leased Property without the prior written consent of Developer, which consent shall not be unreasonably withheld, and (b) the City shall operate, manage or use any Non-Leased Property in a manner that is consistent and compatible with the redevelopment, use and operation of that portion of the Downtown Site already purchased by Developer or affiliated entities for redevelopment. The sale of the Property shall be subject to any lease or other rental agreement hereinafter entered into by the City on any Non-Leased Property; provided, however, that any such leases or other rental agreement (other than the Post Office Lease, if applicable) must include a provision specifically permitting the City, or its successor in interest, to terminate the lease or rental agreement upon twelve (12) months' prior written notice.

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7.2 Condition of Title. The City agrees from and after the date hereof until the Closing of the sale of the Property to Developer or the termination of this Agreement that it will not encumber the Property with any mortgage or deed of trust that will not be paid off or reconveyed prior to Closing of the Property; provided, however, that nothing contained herein shall preclude the City from forming a local improvement district or utility local improvement districts in connection with the construction of street improvements or public improvements. The parties acknowledge that Developer will not be required to take title to any portion of the Property which is encumbered by any lease that is not a Permitted Exception or is not contemplated by or allowed pursuant to Section 7.1 above. In preparing the Boundary Line Adjustment, the City and Developer will cooperate to create a parcel which is not encumbered by any lease, which parcel will be conveyed to Developer as Phase I.

8. City's Conditions Precedent. As conditions precedent to the City's obligation to sell the Property to the Developer, the following conditions must be met to the reasonable satisfaction of the City with respect to the Phase of the Property to be purchased and prior to the Closing Date for such Phase(s) (as defined in Section 10):

8.1 Approval of Financing Plan for the Downtown Site Project. Developer intends to finance the acquisition and construction of the Property with construction loan financing and equity. Developer shall submit the following information to City's consultant Heartland, LLC ("Heartland"), for review and approval by City, which approval shall not be unreasonably withheld. All financial information provided by Developer will be kept strictly confidential by Heartland and, to the extent permitted by law, will not be released, copied or summarized in writing to any other party.

8.1.1 Evidence reasonably acceptable to City of the source, availability and sufficiency of any debt and equity funding required to build the Downtown Site Project or Phase of the Property, as applicable. Copies of executed term sheets or executed commitment letters from equity investors or institutional lenders reasonably acceptable to City and with terms and conditions reasonably acceptable to City will be considered sufficient evidence under this Section 8.1.

8.1.2 Copy of Developer's partnership ~~limited liability company~~ agreement ~~and~~ other organizational documents.

8.1.3 All conditions precedent to the funding of any equity required under the Approved Financing Plan for the Phase of the Property to be acquired shall have been met or waived, and Developer has obtained an executed term sheet or commitment letter from the Construction Lender approved as part of the Approved Financing Plan on terms and conditions reasonably acceptable to City which provides for a funding of the Construction Loan for the Phase of the Property to be acquired no later than six (6) months following Closing and the equity investors are in a position to close their respective equity investments simultaneous with Closing of the sale of the Phase(s) of the Property to be acquired.

Upon approval of the information and agreements set forth in subsections 8.1.1 and 8.1.2, such documents and the intended financing of the Downtown Site Project or Phase of the

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Property, as applicable, shall constitute the Approved Financing Plan for the Property. Any material change to the Approved Financing Plan for the Downtown Site Project or Phase of the Property, as applicable, must first be submitted to and approved by City, which approval shall not be unreasonably withheld. In the event the equity investors or institutional lenders financing Phase I are not also financing the acquisition and development of Phases II and III, approval of the financing plan for subsequent Phases shall be a condition precedent to Closing of subsequent Phases.

8.2 Leasing. Developer has provided City with copies of executed leases or letters of intent from prospective tenants for thirty five percent (35%) of the total gross leasable retail space proposed as part of the Downtown Site Project. Developer has provided a plan for working with the local business community to identify an appropriate tenant mix for retail space in the Downtown Site Project.

8.3 Commercial Site Development Permit. City has issued a final commercial site development permit for the overall Downtown Site Project (which includes schematic design approval for the entire Downtown Site Project).

8.4 Application for Building Permit. Developer has submitted an application for a building permit in a form and with all supporting documents and information required by the City to commence processing of the building permit for the construction of all Phase I buildings and required or functionally related infrastructure for the Downtown Site Project (including, but not limited to, the 100 units of affordable housing), or for Phase II and Phase III, for the construction of all Phase II or Phase III buildings and related infrastructure or other improvements, as applicable, of the then applicable Phase of the Downtown Site Project.

8.5 Affordable Housing Development. Prior to the Closing of the sale on the portion of the Property on which Affordable Housing Units will be located, Developer shall have provided City with copies of a purchase and sale agreement or other documentation (including evidence of debt and equity financing and other funds necessary to complete the purchase and development of 100 Affordable Housing Units within the Downtown Site Project) reasonably acceptable to City from Housing Resource Group, a Washington non-profit corporation, or other affordable housing developer reasonably acceptable to City (the "Affordable Housing Developer") setting forth its agreement to develop a minimum of 100 Affordable Housing Units within the Downtown Site Project (the "Affordable Housing Project"), including its agreement to execute an affordable housing covenant in form and substance satisfactory to City that it will meet the affordable housing requirements set forth in Section 18.77.030 of the Kenmore Municipal Code (the "Affordable Housing Covenant"). Prior to Developer's acquisition of that portion of the Property on which the Affordable Housing Units will be located, all conditions precedent to closing of any Construction Loan to the Affordable Housing Developer and the funding of any equity required to construct the Affordable Housing Project shall have been met or waived, any additional funding secured, the Construction Lender and/or equity investors are in a position to close their respective loans and/or equity investments with the Affordable Housing Developer simultaneously with Closing of the sale of that portion of the Property on which the Affordable Housing Units will be located, and the Affordable Housing Developer must have obtained a guaranteed maximum price construction contract in an amount not in excess of the

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project budget for the Affordable Housing Project executed by a duly licensed general contractor reasonably acceptable to the City, together with a surety bond or other financial assurance reasonably acceptable to City to ensure completion of all buildings and other improvements for the Affordable Housing Project.

8.6 Financial Guarantees. Developer shall have posted such financial guarantees from a bank or other entity reasonably acceptable to City as shall be required for performance under permits as required under Title 21 of the Kenmore Municipal Code in the form and amount required under the Kenmore Municipal Code.

8.7 Compliance by Developer. Developer shall have materially performed, observed and complied with all of the covenants, agreements, obligations and conditions required by this Agreement to be performed, observed and complied with by it prior to or as of the Closing Date.

8.8 Completion Bonds. Any completion bond obtained by Developer and/or Affordable Housing Developer shall name the City as a co-obligee.

8.9 Correctness of Representations and Warranties. The representations and warranties of Developer set forth in this Agreement shall be true and correct on and as of the Closing Date.

8.10 No Bankruptcy. None of Developer, Affordable Housing Developer or any of their respective partners, members or managers (a) has applied for or consented to the appointment of a receiver, custodian or trustee for it or any of its property, (b) has become insolvent, (c) has failed generally or admitted in writing its inability to pay its debts as they become due, (d) has consolidated, liquidated or dissolved, (e) has filed a petition or action for relief relating to any federal or state bankruptcy, reorganization, insolvency, moratorium or similar statute or any other law or laws for the relief of or relating to debtors, or (f) has made an assignment for the benefit of its creditors or entered into an agreement of composition with its creditors, nor (g) has a petition been filed against Developer, Affordable Housing Developer or any of their respective partners, members or managers under any federal or state bankruptcy, reorganization, insolvency, moratorium or similar statute, or any other law or laws for the relief of or relating to debtors.

8.11 No Defaults With Respect to Development of Prior Phases of Downtown Site Project. For all sales of Phases other than Phase I, there is no default by Developer or Affordable Housing Developer under this Agreement with respect to its development of any prior Phases of the Downtown Site or the Affordable Housing Project acquired by it and no event that with the giving of notice, the passage of time, or both, would constitute an Event of Default by Developer or its affiliates or the Affordable Housing Developer under this Agreement and construction is proceeding in due course on parcels previously acquired by Developer, any of its affiliates or the Affordable Housing Developer in accordance with the requirements of this Agreement. There is no default by Developer, any of its affiliates or the Affordable Housing Developer under the terms of any financing obtained by any of them in connection with the acquisition and development of any parcel constituting a portion of the Downtown Site Project or

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the Affordable Housing Project, nor has any event occurred that with the giving of notice, the passage of time, or both, would give such lender(s) under any such financing the right to declare a default thereunder or to accelerate repayment of any indebtedness or to foreclose any mortgage or deed of trust against any portion of the Downtown Site or the Affordable Housing Project then owned by Developer, any of its affiliates or the Affordable Housing Developer or exercise other remedies with respect to any portion of the Downtown Site Project then owned by Developer, any of its affiliates or the Affordable Housing Developer.

8.12. Commencement of Construction of Phase I Buildings and Affordable Housing Project. For all sales of Phases other than Phase I, Developer has (a) completed excavation for all buildings proposed to be built as part of Phase I, (b) completed construction of any structural components of the structured parking proposed to be built as part of Phase I, (c) completed installation of any building foundations and (d) commenced construction of above-ground structural components of the buildings proposed to be built as part of Phase I, and Affordable Housing Developer has commenced construction of the above-ground structural components of the buildings in which the Affordable Housing Project will be located.

The foregoing conditions contained in this Section 8 are solely for the benefit of the City. If any of the foregoing conditions are not satisfied, the City shall have the right, at its sole election, to waive the condition and proceed with the sale of the Property or Phase, as applicable.

9. Developer's Conditions Precedent. Developer's obligations to close the sale of the Property or Phase, as applicable, are subject to satisfaction of each of the following conditions, each of which is for the benefit of Developer and any or all of which may be waived by Developer in writing at its option:

9.1 Compliance by City. The City shall have materially performed, observed and complied with all of the covenants, agreements, obligations and conditions required by this Agreement to be performed, observed and complied with by it prior to the Closing Date, including the recording of the Boundary Line Adjustment reconfiguring the Property into at least three (3) legal lots in accordance with the terms of this Agreement.

9.2 Correctness of Representations. The representations and warranties of the City set forth in this Agreement shall be true and correct on and as of the Closing Date.

9.3 Intentionally Deleted.

9.4 Title Policy. The Title Company shall be in a position to issue Developer the Title Policy in accordance with Section 5.2.

9.5 Commercial Site Development Permit. The City has issued a final Commercial Site Development Permit for the overall Downtown Site Project.

9.6 Application for Building Permit. The City has confirmed to Developer that it has received and considers to be complete Developer's application for a building permit for the construction of all Phase I buildings (including the Affordable Housing Project) and required or functionally related infrastructure for the Downtown Site Project or for Phase II and

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Phase III, as applicable, for the construction of all Phase II or Phase III buildings and related infrastructure or other improvements of the then applicable Phase of the Downtown Site Project.

The foregoing conditions contained in this Section 9 are solely for the benefit of Developer. If any of the foregoing conditions are not satisfied, Developer shall have the right, at its sole election, to waive the condition and proceed with the sale of the Property.

10. Closing.

10.1. Closing Dates. The City and Developer agree that the dates for the Closings of the three Phases will be dates mutually agreed upon by the City and Developer as follows:

10.1.1 Phase I. The Closing of Phase I will occur on a date mutually agreed upon between City and Developer upon satisfaction of the closing conditions applicable to Phase I but in no event later than ~~December 15~~~~October 22~~, 2014 (except as such date may be extended under the terms of this Agreement, including, without limitation, the extension resulting from an appeal of the CSDP as set forth in Section 12.2).

10.1.2 Phase II. The Closing of Phase II will be no later than the second anniversary of the Closing of Phase I.

10.1.3 Phase III. The Closing of Phase III will be no later than the second anniversary of the Closing of Phase I.

Closing shall take place in the offices of the Escrow Agent. In the event either the City or Developer has been unable, despite its reasonable, good faith efforts to satisfy all of the conditions set forth in Sections 8 and 9, as applicable, by the Closing Dates set forth above (as such dates may be extended by Developer under Section 10.1.1, 10.1.2 or 12.2 of this Agreement) then, unless the City and Developer agree to a further extension of the Closing Date, this Agreement shall automatically terminate and the parties shall record a termination of any Memorandum of this Agreement previously recorded in the real property records. If the failure to close is a Default on the part of City and provided Developer is not in default under this Agreement the Deposits shall be refunded to Developer; otherwise City shall have the right to retain the Deposits. As used in this Agreement, "Closing" and "Closing Date" mean the date on which all appropriate documents are recorded and proceeds of the sale are available for disbursement to the City. In no event shall Developer have any right to purchase any interest in the Property after ~~December 15~~~~October 22~~, 2016.

10.2 Delivery to Escrow Agent. On or before the Closing Date, the following documents and moneys shall be delivered to Escrow Agent:

10.2.1 By City. The City shall deliver the following original documents, duly executed and acknowledged by the City:

- (a) the Boundary Line Adjustment (if not previously recorded);

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- (b) the Deed;
- (c) a real estate excise tax affidavit;
- (d) FIRPTA Affidavit;
- (e) if this is a Closing of Phase I, the CC&Rs for the Downtown Site Project;
- (f) intentionally deleted;
- (g) if requested by the Construction Lender, a subordination of the City Mortgage in accordance with Section 4.6;
- (h) any and all such other documents as may be required by the Title Company and as are consistent with the provisions of this Agreement; and
- (i) the City's share of Closing costs.

10.2.2 By Developer. Developer shall deposit the Purchase Price in cash or immediately available funds and shall deliver the following original documents, duly executed and acknowledged by Developer, where appropriate:

- (a) the Deed;
- (b) a real estate excise tax affidavit;
- (c) the City Mortgage;
- (d) if this is a Closing of Phase I, the CC&Rs for the Downtown Site Project and the Affordable Housing Covenant in the form attached hereto as Exhibit G;
- (e) intentionally deleted;
- (f) executed assignments of the architect's agreement(s) and construction contract(s);
- (g) any and all other documents and agreements as may be required by the City or the Title Company and as are consistent with the terms of this Agreement; and
- (h) Developer's share of Closing costs.

10.3 City's Closing Costs. In connection with the Closing, the City shall pay the real estate excise tax, if any, the cost of the Title Policy with liability in an amount equal to the Purchase Price to the extent of the premium for standard owner's coverage, the premium for

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any title insurance it elects to obtain insuring the lien of the City Mortgage, one-half of the escrow fees, and the City's attorneys' fees.

10.4 Developer's Closing Costs. In connection with the Closing, Developer shall pay the cost of the Title Policy to the extent in excess of the premium for standard owner's coverage together with all endorsements to the Title Policy requested by Developer, one-half the escrow fees, all recording fees, all third party costs associated with the Boundary Line Adjustment, all costs associated with Developer's financing, including title premiums and recording costs, and Developer's attorneys' fees.

10.5 Prorations. All utilities and special assessments shall be prorated as of the Closing. Because the City is exempt from property taxes, no proration of ad valorem property taxes is required; however, Developer shall be responsible for payment of all property taxes, including special assessments and local improvement district assessments which affect the Property from and after the Closing Date.

11. Possession. Developer shall be entitled to possession of the Property on Closing, free and clear of all liens, leases, encumbrances and exceptions other than the Permitted Exceptions, the Pre-Closing Ground Lease, any leases with early termination rights as permitted in Section 7.1 on any portions of the Property not subject to the Pre-Closing Ground Lease and any liens, encumbrances or other exceptions arising through the actions of Developer or its agents, employees or consultants.

12. Construction of Downtown Site Project.

12.1 Development in Phases; Commencement and Completion of Construction. Developer has provided the City the Project Schedule attached to this Agreement as Schedule 2, which represents Developer's current anticipated schedule for development of the Downtown Site Project. Developer reserves the right to develop the Property in up to three phases. Phase I will consist of the construction of the mixed use development as described in Section 2.2.1 to be constructed on the first portion of the Property to be purchased by Developer under this Agreement. Phase II will consist of the development of the Property as described in Section 2.2.2 to be constructed on the second portion of the Property to be purchased by Developer. Phase III will consist of the residential development described in Section 2.2.2 to be constructed on the final portion of the property to be purchased by Developer (each individually a "Phase" and collectively "Phases"). The map set forth in Schedule 3 attached to this Agreement shows the contemplated property boundaries for the three Phases. The actual boundaries, however, may vary based on the factors set forth in this Agreement. Developer may close and construct Phase II and Phase III simultaneously. Developer shall commence construction within thirty (30) days following issuance of all building permits necessary for such Phase. For purposes of this Agreement commencement of construction means commencement of mobilization, site preparation, demolition, grading, excavation for foundations of buildings or other structures to be constructed as part of such Phase, or any combination of such events. Once construction on any Phase commences, Developer shall thereafter diligently and continuously prosecute construction of such Phase in a good and workmanlike manner, free from defects in work or materials and in substantial accordance with the Approved Building Permit

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Documents for the applicable Phase so as to achieve Substantial Completion of the applicable Phase within two (2) years following the commencement of construction and Final Completion of the applicable Phase within three (3) years following the commencement of construction, subject to extension in each case for Unavoidable Delay. The Downtown Site Project shall be constructed in accordance with all Requirements of Law. "Requirements of Law" means all requirements relating to land and building construction, including, without limitation, planning, zoning, building, subdivision, health, environmental, air quality, flood hazard, fire safety, accessibility and other governmental approvals, permits, licenses and/or certificates as may be necessary from time to time to comply with all applicable statutes, rules, orders, regulations, law, ordinances, and covenants, conditions and restrictions which apply to and/or affect the design, construction, existence, intended use, operation and/or occupancy of the Property, the Downtown Site Project or any Phase thereof, including, with respect to the Affordable Housing Units, the Affordable Housing Covenant.

12.2 Court and Administrative Agency Appeals. If there is a timely appeal of this Agreement, including the SEPA decision of the City's SEPA responsible official or an appeal of the CSDP, to a court or administrative agency, Developer and the City shall continue to carry out the terms, conditions and schedules set forth in this Agreement, unless enjoined or prohibited by a court or administrative agency. If applicable statutes and regulations authorize a petitioner or appellant to request a stay of this Agreement and construction of the Downtown Site Project, Developer and the City shall oppose such request. Developer and City may jointly elect to suspend the permit and construction approval process set forth in Section 13 of this Agreement and extend the development milestones set forth in the Project Schedule on a day for day basis during the pendency of any appeal described in the first sentence of this Section 12.2. The Closing of Phase I and the issuance of all clearing and grading and building permits for Phase I ("Phase I Building Permits") shall be delayed until entry of the final decisions regarding any appeals described in the first sentence of this Section 12.2. If an appeal is pending when the City is ready to issue the Phase I Building Permits, the City shall issue the Phase I Building Permits if Developer waives in writing the permit issuance conditions of Section 13 and releases the City and its officers, employees and agents from any claims, losses, damages or costs of any kind whatsoever incurred or suffered by Developer and its officers, employees and agents and arising out of or in any way resulting from an adverse final decision on an appeal. Developer and the City shall be responsible for their own costs and expenses of defending any appeal. If any appeal is not finally concluded within twelve (12) months following the effective date of the appeal or the issuance of the CSDP, then the City shall have the right to terminate this Agreement unless Developer requests that the City continue to defend the appeal and agrees to pay the City's reasonable legal fees in connection therewith. In such event, City shall direct the City attorney or other legal counsel designated by the City to defend the appeal diligently and in good faith (but without liability to, and at the sole cost of Developer) and all development milestones set forth in the Project Schedule shall be extended on a day for day basis during the pendency of such appeal. In the event any appeal described in the first sentence of this Section 12.2 is not finally concluded within twenty-four (24) months following the Effective Date of this Amended and Restated Agreement, then either party shall have the right to terminate this Agreement by written notice to the other unless the parties mutually agree that City will

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continue to defend the appeal (and Developer shall continue to pay the City's reasonable legal fees in connection therewith).

12.3 Unavoidable Delay. The existence of Unavoidable Delay shall excuse Developer for resulting delays and changes in the Project Schedule that relate to commencement or completion of construction of Phases of the Downtown Site Project (but not the date by which the Property or a Phase thereof must be purchased or a permit submitted). For purposes of this Agreement "Unavoidable Delay" means strikes, riots, judicial and/or regulatory actions by federal, state or local governmental agencies that enjoin construction of the Downtown Site Project or any Phase thereof (except for delays resulting from an appeal of this Agreement or the CSDP which are addressed by Section 12.2), acts of God, war or acts of terrorism which are not within the reasonable control of Developer and which, despite the exercise of reasonable diligence, cannot be prevented or avoided, that delay construction on the Property or any Phase thereof. Developer shall notify City in writing as soon as possible but in no event later than twenty (20) days after an event which Developer believes constitutes Unavoidable Delay has occurred, together with the data and other information supporting such determination.

12.4 Hiring and Training Programs. Developer shall use reasonable good faith efforts to cause contractors and subcontractors hired to work on various Phases of the Downtown Site Project to implement a recruitment strategy that encourages hiring of City residents and other targeted groups and which provides apprenticeship training opportunities.

12.5 Sustainability Requirements. City and Developer agree that the Downtown Site Project is intended to be a model for economically sustainable "green" development. Developer shall endeavor to design and construct the Downtown Site Project to LEED Certification Standards or a comparable sustainable design standard.

12.6 Other Design Requirements Developer shall use its best efforts to provide entrances directly from the sidewalks adjoining the Property to retail spaces located on the ground level. Design, development and construction shall also be consistent with the CC&Rs.

12.7 Project Manager and Local Involvement. The Project Manager for development of the Downtown Site Project shall be Matthew N. Burton. If Matthew N. Burton is no longer affiliated with Developer, Developer shall designate a new experienced project manager only after consultation with and approval of the City, which approval will not be unreasonably withheld or delayed. Developer may assign other qualified construction personnel to the Downtown Site Project as needed to construct the project in accordance with the requirements of this Agreement. At all times during the term of this Agreement, Developer shall have and maintain a visible local presence in the City, which shall include (i) attending community events at least once a calendar quarter to provide the City and community with updates on the status of the Downtown Site Project and future development plans and (ii) having a local property management presence for the Downtown Site, and (iii) taking a leadership position and otherwise meaningfully participating in task forces and committees formed to promote economic development in the City, although Developer shall not be obligated to make additional financial contributions to such task force or committee efforts. In addition, the Project Manager and other Development Team Members shall provide regular written reports to the

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City, on at least a quarterly basis, describing (A) any changes in Developer, Urban Partners or the Development Team or in any commitments made by Development Team Members; (B) Developer's progress in the development of the Downtown Site pursuant to this Amended and Restated Agreement; and (C) any new projects undertaken, directly or indirectly, by Urban Partners, and any changes in any projects in which Urban Partners is engaged, directly or indirectly, that might have an impact on Developer's ability to complete the Downtown Site Project as contemplated by this Amended and Restated Agreement, as well as participating in regular conference calls and City Council sessions as reasonably requested by the City.

12.8 Disclaimer of Liability by the City. Approval by City of the CSDP (as defined in Section 13.1) or Building Permit Documents for the Downtown Site Project shall not constitute any representation or warranty by City that such plans comply with all Requirements of Law, and City assumes no liability with respect thereto. Notwithstanding any provision of this Agreement to the contrary, City is under no obligation or duty to, nor shall it design, supervise design, construction or supervise the construction of the Downtown Site Project. The City's approval of the CSDP or Building Permit Documents for the Downtown Site Project is for the sole purpose of protecting its rights under this Agreement and ensuring that development of the Downtown Site Project is in accordance with the requirements of the Agreement. Any such approval by City shall not constitute any representation or warranty, express or implied as to the adequacy of the design or any obligation on City to ensure that work or materials are in compliance with any CSDP or Building Permit Documents for the Downtown Site Project, this Agreement or any building requirements imposed by any governmental agency. Nothing contained herein is intended to constitute a waiver of the City's regulatory authority as the permitting jurisdiction, nor a waiver of its rights to inspect on-going construction to determine that such construction is in accordance with the terms and conditions of development permits issued by the City. The City is under no obligation or duty and disclaims all responsibility to pay for the cost of construction of the Downtown Site Project, the cost of which is and shall at all times remain the sole liability and responsibility of Developer.

12.9. Review and Inspection. City shall have the right, but not the obligation, to have an independent consulting architect, engineer or other appropriate consultant retained to inspect the construction of the Downtown Site Project as it progresses and to review the construction work and its compliance with the applicable CSDP and Approved Building Permit Documents for the Downtown Site Project, or Phase thereof as applicable. The cost of such independent consultant shall be paid by City. City shall provide written notice to Developer of such inspection and the inspection shall be coordinated with Developer and its contractors so as to not interfere with or delay construction of the Downtown Site Project or Phase thereof, as applicable. If during the course of such construction, City shall determine that the construction is not proceeding in accordance with the applicable CSDP or Approved Building Permit Documents or this Agreement, City shall use best efforts to give notice in writing to Developer, specifying the particular deficiency or omission and Developer shall thereupon take, or cause to be taken, all steps necessary to seek to enforce the construction contracts to correct same. The failure of City to observe deficiencies or omissions or to give such notice shall not give rise to any liability for City and shall not be considered a waiver of any right of City under this Agreement.

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13. City Approval of Commercial Site Development Permit; Building Permit Documents.

13.1 Approval Procedure – Commercial Site Development Permit. Developer shall cause its consultants to prepare schematic design drawings and outline specifications for the Downtown Site Project for the entire Property which schematic design documents will be consistent with the approved Downtown Conceptual Plans in all material respects. The schematic design documents will include a site plan, engineering plan, elevations, the articulation and heights of buildings, setbacks, access to retail space from the public streets adjoining the Property interior circulation plan, courtyards, loading docks and other ancillary improvements, proposed exterior materials and landscaping plan including the size of any open space, water features and other sustainability features (i.e., green roofs) for the entire Downtown Site Project. Developer shall file an application for a commercial site development permit (“CSDP”), including a phasing plan and the schematic design documents on or before December 15~~October 28~~, 2013. A CSDP is separate from and does not replace any other required permits, but in the discretion of the director of community development may be combined and reviewed concurrently with other permits. A CSDP application shall be processed in accordance with noticing requirements for a Type 2 land use decision as outlined in Chapter 19.25 of the Kenmore Municipal Code. Failure of the Developer to file an application for the CSDP on or before December 15~~October 28~~, 2013, shall constitute an Event of Default under this Agreement, in which event City shall have the right to terminate this Agreement upon written notice to Developer and exercise the remedies set forth in Section 21.2.1. of this Agreement.

13.2 Resubmittals-CSDP. City agrees to use good faith efforts to expedite its review of Developer's application for the CSDP. City shall advise Developer within ten (10) days of receipt if it determines that Developer's application for the CSDP is not complete. If the City disapproves Developer's application for the CSDP, the City will provide Developer its objections to such application. In such event, Developer shall cause its consultants to amend or modify its application materials so as to respond to objections or comments made by City staff and shall resubmit the same for further review. The process of resubmittal and review shall continue until all parties have approved the submittals. The City shall issue a decision regarding approval or disapproval of the CSDP within ninety (90) days following receipt of a CSDP application that it has determined is complete. In the event the CSDP has not been approved by the City by the date set forth above, City shall not be in default under this Agreement, but Developer shall have the right to terminate this Agreement upon written notice to City and Escrow Agent, whereupon this Agreement shall terminate, Developer shall deliver to City the originals of all conceptual and schematic design documents related to the Property for no additional consideration, and except as otherwise expressly provided herein, neither party hereto shall have any further rights or obligations under this Agreement.

13.3 Approval Procedure-Building Permit Documents. Developer shall cause its consultants to prepare building permit drawings and specifications for the Downtown Site Project (the “Building Permit Documents”) (which may be prepared and submitted in phases) which Building Permit Documents will be consistent with the CSDP in all material respects. Developer may submit such drawings and specifications separately for each Phase. Developer shall submit the Building Permit Documents to City staff for review by City staff for consistency

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with the CSDP. City staff shall promptly review the Building Permit Documents submitted in accordance with this Agreement and shall give Developer written notice in accordance with the requirements of the Kenmore Municipal Code following its receipt of such Building Permit Documents of its approval or disapproval thereof, specifying in the case of its disapproval, the reasons therefor. City staff shall have the right to disapprove Building Permit Documents which (a) do not comply with all applicable building and land use laws, rules and regulations, (b) do not comply with the Development Parameters, (c) do not comply with the CSDP in all material respects, or (d) propose changes in work or materials which do not conform with the Minimum Criteria. Nothing contained herein shall constitute a waiver of the City's rights as the jurisdiction with permitting authority over the Downtown Site Project to review Developer's application for building and other permits, or to impose conditions prior to issuance of permits necessary to construct the Downtown Site Project in accordance with City and state laws, rules and regulations.

13.4 Resubmittals-Building Permit Documents. If objections or comments are submitted in writing as set forth in the preceding subsection, Developer shall cause its consultants to amend or modify the Building Permit Documents so as to respond to objections or comments made by City staff and shall resubmit the same for further review. The process of resubmittal and review shall continue until City staff approves the submittals. The final Building Permit Documents setting forth in detail the requirements for the construction of the Project which have been approved by the City are called the "Approved Building Permit Documents". There shall be no material changes in the Approved Building Permit Documents except as set forth in Section 13.5 below.

13.5 Changes to Building Permit Documents. There shall be no significant changes to the Approved Building Permit Documents without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. All proposed significant changes in the Approved Building Permit Documents shall be submitted to City staff for review and approval. City staff shall notify Developer in writing following receipt of such proposed change whether City staff approves or disapproves such change. If City staff approves such change, the proposed change shall be deemed approved, and such change shall thereafter become part of the Approved Building Permit Documents. If City staff disapproves such change, City staff shall notify Developer in writing specifying the reason for its disapproval.

The City and Developer agree that the procedures set forth in Sections 13.3 through 13.5 above reflect the City's contractual right to review building permit documents and does not constitute time periods for review of permit applications by the City's Planning Department under the municipal powers granted to the City by the laws of the State of Washington.

13.6 Building Permits. Once the Building Permit Documents have been approved by the City, Developer shall file an application for a building permit for such Phase of the Downtown Site Project. Building permit applications shall be submitted for each Phase on or before the date set forth in the Project Schedule attached hereto as Schedule 2 for such Phase. Developer shall file its application for a building permit for Phase I no later than April 23, 2014. City agrees to use good faith efforts to expedite its review of Developer's applications for building permits. City shall advise Developer within ten (10) days of receipt if it determines that

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Developer's applications for building permits are not complete. Developer shall pay all fees associated with obtaining all building and other permits required under the Kenmore Municipal Code and City shall process such building and other permit applications in accordance with all requirements set forth in the Kenmore Municipal Code. The City shall issue a decision regarding approval or disapproval of a building permit for each Phase within ninety (90) days following receipt from Developer of a complete application for the permit for the applicable Phase.

14. Developer Financing of Property; Rights of Construction Lenders.

14.1 Construction Loan Restriction. Notwithstanding any provision of this Agreement to the contrary, Developer shall not have the right to mortgage, pledge, encumber or assign its rights under this Agreement or the Property, in whole or in part, except in connection with financing of the acquisition and development of the Downtown Site Project by a bank or other financial institution pursuant to a loan ("Construction Loan") which has been approved by City pursuant to the Approved Financial Plan for the Downtown Site Project or Phase thereof, as applicable ("Construction Mortgage"). All proceeds of the Construction Loan shall be used solely to pay for costs associated with the construction of the Downtown Site Project or Phase thereof, as applicable, and other necessary development costs and shall not be used for any other purpose or applied to any other property or project. Until Developer is entitled to a certificate of completion with respect to the Downtown Site Project or Phase thereof, as applicable, Developer shall not encumber the Property or Phase thereof, as applicable, as security for a loan in which the Property or Phase thereof, as applicable, is jointly secured with or cross-defaulted with any real property which is not included within the definition of the Property or Phase thereof, unless Developer is the then owner of all the Phases.

14.2 Protection of Construction Lender. City, upon serving Developer any notice or demand with respect to any breach or default by Developer of its obligations or covenants under this Agreement, shall at the same time forward a copy of such notice or demand to Developer's construction lender ("Construction Lender") at the last address of Construction Lender shown on the records of City. The City shall cooperate with Developer in executing estoppel certificates in favor of Developer's Construction Lender regarding the status of this Agreement and shall provide such Construction Lender other non-confidential and reasonably available information about the status of the Downtown Site Project or the status of any permit applications submitted to the City.

14.3 Construction Lender's Right to Cure Defaults. Construction Lender shall have the right, but not the obligation, to remedy such default or cause the same to be remedied for a period of thirty (30) days after the expiration of the cure period, if any, provided for under this Agreement (or, if such default requires more than thirty (30) days to cure, such longer period as is necessary (including any period necessary to foreclose the Construction Loan and take possession of any Phase, as applicable) so long as Construction Lender cures monetary defaults under this Agreement and continues to pay taxes, insurance premiums and other items required to be paid by Developer under this Agreement and commences to cure the non-monetary defaults within the thirty (30) day period and diligently prosecutes the cure to completion; and the City shall accept such performance by or at the instance of Construction Lender as if the same had been made by Developer; provided, however, that Construction Lender shall not be required to

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cure any non-monetary default which by its nature is not susceptible of being cured by Construction Lender. The Construction Lender shall have the right, but not the obligation, to assume the rights, duties and obligations of Developer under this Agreement and shall thereafter construct or complete the construction of the applicable Phase or Phases of the Downtown Site Project in accordance with the terms, covenants, conditions and provisions of this Agreement. However, nothing in this Agreement shall be deemed to permit or authorize Construction Lender to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized under this Agreement. Nothing contained in this Agreement shall be deemed to permit or authorize Construction Lender to undertake or continue the construction or completion of the applicable Phase or Phases of the Downtown Site Project (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations under this Agreement. If Construction Lender determines to proceed with the construction of any Phase, Construction Lender shall notify City in writing of its election to assume the rights, duties and obligations of Developer under this Agreement within ninety (90) days following the Developer's Event of Default and shall enter into an assumption agreement in form and substance satisfactory to City with respect to the applicable Phase, and thereafter Construction Lender shall have all the rights, duties and obligations of Developer with respect to such Downtown Site Project. If Construction Lender elects not to cure such default, City shall have the right to terminate this Agreement as to all portions of the Property not yet acquired by Developer and may exercise its other rights and remedies under this Agreement in the event of a Developer Event of Default.

14.4 Protection of City. Construction Lender, upon serving Developer any notice or demand with respect to any breach or default by Developer of its obligations or covenants under the Construction Note, the Construction Mortgage or any other document evidencing or securing the construction loan (collectively, the "Construction Loan Documents"), shall at the same time forward a copy of such notice or demand to the City at its address set forth in Section 25.11 of this Agreement.

14.5 Multiple Construction Lenders. If there is more than one Construction Lender involved in providing financing for the Downtown Site Project, each Construction Lender which has the first lien on any Phase shall be deemed a Construction Lender for purposes of this Agreement.

15. CC&Rs for Downtown Site Project. At the Closing of Phase I, Developer shall record covenants, conditions and restrictions ("CC&Rs") against the Property in form and substance reasonably satisfactory to City to ensure that the Property and the various buildings constructed thereon will be owned, developed, operated and maintained as an attractive setting for retail, office and residential uses in an urban environment, with ample landscaped areas, attractive high-quality structures, proper and desirable uses and that protect the owners and occupants of the Downtown Site against improper and undesirable uses of the Property. The CC&Rs shall permit use of the central gathering space developed as part of Phase I for up to four (4) events a year sponsored by the City on terms and conditions which are mutually acceptable to City and Developer. City shall provide Developer with a proposed schedule of such events on or before February 1st of each year. Developer and the Affordable Housing Developer shall also

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execute and record the Affordable Housing Covenant with respect to the development and use of the Affordable Housing Units to be constructed under this Amended and Restated Agreement (including any affordable condominium units for sale at prices and to residents who meet the requirements of the Affordable Housing Covenant).

16. Damage and Destruction; Condemnation.

16.1 Damage and Destruction Prior to Closing. Developer and the City acknowledge that Developer intends to demolish the existing improvements on the Property, and that the Purchase Price is not based on the value of such improvements. Therefore, if the improvements on the Property are damaged by fire or other casualty prior to Closing, this Agreement will not automatically terminate. The City shall, however, immediately notify Developer in writing of any damage to the Property by fire or other casualty prior to Closing. If Developer determines, in its reasonable discretion, that such damage or casualty will, if Developer takes title to the Property, subject Developer to potential liability which is unacceptable to Developer, then Developer may, within thirty (30) days from the receipt of the City's notice, advise the City in writing that Developer intends to terminate this Agreement with respect to the Property or such Phase of the Property as has been damaged or has suffered casualty. If Developer elects to terminate this Agreement with respect to the Property, Developer will receive a full refund of the Deposits, Developer shall deliver to City the originals of all conceptual and schematic design documents related to the Property then in existence for no additional consideration and except as otherwise expressly provided herein, neither party hereto shall have any further rights, duties or obligations under this Agreement. If Developer elects not to terminate this Agreement, this Agreement shall remain in full force and effect, the Purchase Price shall not be changed thereby, Developer shall accept the Property, or Phase, as applicable, in its then condition and state of repair and the parties agree that City shall have no obligation to repair or restore the Property or any improvements then located thereon.

16.2 Damage or Destruction Following Closing. In the event there is any damage or destruction to the Property or any Phase thereof following Closing but prior to Substantial Completion of the Downtown Site Project, Developer shall give City prompt written notice thereof generally describing the nature and cause of such casualty and the extent of the damage or destruction to the Downtown Site Project. Developer shall cause reconstruction and restoration of the portion of the Downtown Site Project that was damaged or destroyed in accordance with the applicable construction documents, the previously Approved Building Permit Documents for such portion of the Downtown Site Project and the provisions of this Agreement.

16.3 Condemnation. As used in this Agreement, the term "condemnation" refers to a taking by any public or governmental authority under power of eminent domain or any transfer in lieu thereof. In the event of any condemnation prior to Closing, the City shall immediately notify Developer in writing upon learning of the pendency of any condemnation proceeding or the likelihood thereof. Developer shall have thirty (30) days from the receipt of such notice to advise the City in writing whether it wishes to (a) waive its objections to the condemnation and proceed with Closing, or (b) terminate this Agreement with respect to either the entire Property or such Phase as is affected by the condemnation. If Developer elects to

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terminate this Agreement with respect to the entire Property, Developer will receive a full refund of the Deposits. If Developer elects to terminate this Agreement with respect to one or more Phases, it will receive a prorated refund of the Deposits. Developer shall deliver to City the originals of all conceptual and schematic design documents related to the Property then in existence for no additional consideration and except as otherwise expressly provided herein, neither party hereto shall have any further rights, duties or obligations under this Agreement. If Developer elects not to terminate this Agreement, this Agreement shall remain in full force and effect, Developer shall accept the Property, or Phase, as applicable, in its then condition and state of repair and the parties agree that City shall have no obligation to repair or restore the Property or any improvements then located thereon, and City shall assign to Developer at Closing all rights to condemnation proceeds or, alternatively, the Purchase Price will be reduced by an amount equal to the then applicable price per square foot for each square foot in that portion of the Property condemned. If there is any condemnation following Closing but prior to Substantial Completion of the Downtown Site Project, the provisions of Section 16.2 shall govern the use of such condemnation proceeds.

17. Insurance and Indemnification.

17.1 Insurance. Developer shall procure and maintain, at a minimum, for the duration of this Agreement, the following insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the performance of work hereunder by the Developer, its agents, representatives, employees, contractors and/or subcontractors. The cost of such insurance shall be paid by the Developer or its general contractor. Coverage shall be at least as broad as:

(i) General Liability: Insurance Services Office form number (CG00 001) covering Commercial General Liability, with a limit of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 aggregate.

(ii) Automobile Liability: Insurance Services Office form number (CA 00 01) covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, with a limit of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 aggregate.

(iii) Workers' Compensation: Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, statutory limits.

(a) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. The deductible and/or self-insured retention of the policies shall be the sole responsibility of Developer.

(b) Other Insurance Provisions. The insurance policies required by this Agreement are to contain or be endorsed to contain the following provisions where applicable:

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(i) Liability Policies:

(A) City, its officers, officials, employees and agents are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Developer in connection with this Agreement.

(B) Developer's insurance coverage shall be primary insurance as respects City, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by City, its officers, officials, employees and/or agents shall not contribute with Developer's insurance or benefit Developer in any way.

(C) Developer's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(D) By requiring such minimum insurance, City shall not be deemed to, or construed to, have assessed the risks that may be applicable to Developer associated with this Agreement. Developer shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage.

(E) Insurance required under this Agreement may be covered under a blanket policy of insurance so long as such blanket policy of insurance meets the minimum amounts of insurance required hereunder.

(ii) All Policies. Coverage shall not be canceled until after thirty (30) days' (10 days' for non-payment) prior written notice has been given to City.

(iii) Acceptability of Insurers.

(A) Unless otherwise approved by City, or its risk management consultant, insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's, with minimum surpluses the equivalent of Best's surplus size VIII. All insurance companies providing insurance under this Agreement shall be authorized to do business in the State of Washington.

(B) If, at any time, any of the foregoing policies shall fail to meet the above minimum standards, Developer shall, upon notice to that effect from City, promptly obtain a new policy, and shall submit the same to City, with certificates and endorsements, for approval.

(iv) Verification of Coverage. Developer shall furnish City with certificates of insurance and endorsements required by this Agreement. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer. The certificates are to be on standard insurance industry ACORD form 25-S or equivalent with required endorsements attached and are to be received and approved by City prior to the commencement of activities associated with this Agreement. City reserves the right to require Developer to deliver complete certified copies of all required policies at any time.

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17.2 Indemnification. Developer shall protect, defend, indemnify, and save harmless City, and its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatever (hereinafter “claims”), arising out of or in any way resulting from Developer’s officers, employees, agents, contractors and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Agreement. Developer’s obligations under this Section 17 shall include, but not be limited to:

17.2.1 The duty to promptly accept tender of defense and provide defense to City at Developer’s own expense.

17.2.2 The duty to indemnify and defend City from any claim, demand and/or cause of action brought by or on behalf of any of Developer’s employees or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of Developer’s immunity under Washington’s Industrial Insurance Act, RCW Title 51, as respects City only, with a full and complete indemnity and defense of claims made by Developer’s employees or agents. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

17.2.3 In the event City incurs any judgment, award, and/or costs arising therefrom, including attorneys’ fees, to enforce the provisions of this Section 17, all such fees, expenses, and costs shall be paid by Developer.

Notwithstanding the provisions contained in Subsection 17.2 above, Developer’s obligation to indemnify City shall not extend to any claim, demand or cause of action to the extent caused by the sole negligence of City or any of its officers, officials, employees or agents or breach of this Agreement by City.

17.3 Notice of Claim. City must give Developer written notice of such claim (an “Indemnification Claim Notice”) promptly after the City receives any written notice of any action, lawsuit, proceeding, investigation or other claim (a “proceeding”) against or involving the City by a government entity or other third party, or otherwise discovers the liability, obligation or facts giving rise to such claim for indemnification; provided that the failure to notify or delay in notifying Developer will not relieve Developer of its obligations pursuant to this Section 17 except to the extent that the Developer’s ability to defend against such claim is actually prejudiced thereby. Such notice shall contain a description of the claim and the nature and amount of such loss (to the extent that the nature and amount of such loss is known at such time).

18. Completion of Downtown Site Project.

18.1 Substantial Completion. “Substantial Completion” means that the Developer has paid all permitting and impact fees and the City has issued a letter or certificate of occupancy or similar approval such that the tenants are permitted to physically occupy all of a Phase of the Downtown Site Project for residential, housing, retail and parking purposes, subject to satisfaction of certain conditions noted therein. For the purposes of this Agreement, Substantial Completion will not require the completion of all tenant improvements in retail

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spaces, so long as certificates of occupancy have been issued for all residential buildings and parking structures and the retail space for all tenants identified in Section 8.2.

18.2 Notice of Substantial Completion. Developer shall give notice in writing to City at least thirty (30) days prior to the date upon which Developer anticipates the Phase of the Downtown Site Project shall be Substantially Complete. During the thirty (30) day period after the delivery of the estimated completion notice, City will inspect and review the applicable Phase of the Downtown Site Project to determine whether the Phase of the Downtown Site Project has achieved Substantial Completion, and shall advise Developer of work which must be completed before the City could issue a final certificate of occupancy for the Retail Housing Project. The parties shall prepare a punch list of items to be completed prior to Final Completion. The completion of the punch list shall not be required in order for the applicable Phase of the Downtown Site Project to be Substantially Complete.

18.3 Completion of Punch List Item. Following Substantial Completion of a Phase of the Downtown Site Project, Developer shall cause all punch list items to be completed promptly in accordance with the construction documents for that Phase.

18.4 Final Completion. Developer shall give notice in writing to City at least thirty (30) days prior to the date upon which the Phase of the Downtown Site Project shall have achieved Final Completion. "Final Completion" means that: (a) construction of the Phase of the Downtown Site Project has been completed to the reasonable satisfaction of the City (including completion of all punch list items), (b) the period for filing construction liens has expired or releases or discharges of construction liens in form and substance satisfactory to City have been obtained by Developer from all contractors in accordance with all construction contracts for the Downtown Site Project or Phase, as applicable, and (c) the City has issued all final certificates of occupancy for the Phase of the Downtown Site Project.

18.5 Certificate of Completion. Once Final Completion of a Phase of the Downtown Site Project has occurred, Developer shall file a Notice of Completion with City. Once the City confirms that all improvements intended to be constructed as part of the Phase of the Downtown Site Project are complete and Developer has performed all of its other obligations under the Agreement with respect to a Phase of the Downtown Site Project, City shall furnish the Developer with a Certificate of Completion in the form attached hereto as Exhibit H. The Certificate of Completion shall be a conclusive determination that the parties' agreements with respect to the Developer's construction obligations for that Phase of the Downtown Site Project have been met. The Certificate shall be in a form that enables it to be recorded in the official records of King County, Washington. If the Downtown Site Project is developed in Phases, Developer shall be entitled to a Certificate of Completion with respect to each Phase.

19. Representations.

19.1 City's Representations.

19.1.1 City is a municipal corporation duly organized and validly existing under the laws of the State of Washington and has full legal right, power and authority to own its

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property and carry on its business as now being conducted. All corporate action on the part of City necessary for the authorization, execution, delivery and performance of this Agreement has been duly taken. City has full power and authority to enter into, execute and deliver this Agreement and to perform its obligations under this Agreement.

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

19.1.3 No consent, approval, permission, authorization, order or license of any person or any governmental body is necessary in connection with the execution, delivery and performance of this Agreement by City or any transaction contemplated hereby, except as may have already been obtained by City prior to the date of this Agreement. There is no provision in City's organizational documents which would be contravened by the execution and delivery of this Agreement or by the performance of any provision, condition, covenant or other term required to be performed by City under this Agreement.

19.2 Developer Representations.

19.2.1 Developer is a limited ~~partnership~~liability company duly organized and validly existing under the laws of the State of ~~Delaware~~Washington and has the power to own its property and carry on its business as now being conducted. Urban RECP Portfolio GP, LLC, a Delaware limited liability company, is the sole general partner of Developer and is/are the sole manager/members of Urban RECP Portfolio GP, LLC. All limited partnership~~liability company~~ action on the part of Developer and all limited liability company~~corporate~~ or other action on the part of its general partner, and the manager and members of its general partner, and all other managers and members necessary for the authorization, execution, delivery and performance of this Agreement have been duly taken. Developer has full power and authority to enter into, execute and deliver this Agreement and to perform its obligations under this Agreement.

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

19.2.3 No consent, approval, permission, authorization, order or license of any person or of any governmental body (except for City approval of schematic design documents and Building Permit Documents for the Downtown Site Project and issuance of

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CSDP and building and other permits necessary for construction) is necessary in connection with the execution, delivery and performance of this Agreement by Developer or any transaction contemplated hereby, except as may have already been obtained by Developer prior to the date of this Agreement. There is no provision in Developer's certificate of ~~limited partnership or limited partnership formation or limited liability company agreement~~ nor any provision in the organizational documents of ~~any its general partner or of any limited partner member or manager~~ of Developer which would be contravened by the execution and delivery of this Agreement or by the performance of any provision, condition, covenant or other term required to be performed by Developer under this Agreement.

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

19.2.5 Developer represents and agrees that the Property will be used for the purpose of timely redevelopment as set forth in this Agreement and not held by Developer for speculation in landholding. For purposes of this Agreement, "speculation in landholding" is defined as Developer's acquiring a parcel of the Downtown Site and Developer's not commencing construction within thirty (30) days after receipt of all building permits or not achieving Substantial Completion of the Downtown Site Project or any Phase thereof, as applicable, within two (2) years following commencement of construction for such Phase, and Final Completion of the Downtown Site Project or applicable Phase within three (3) years following the commencement of construction, which failure to commence or complete construction in each case is not due to Unavoidable Delay for which notice was given as required under Section 12.3.

20. Property Taxes. Any and all property taxes and assessments levied against the Property and the Downtown Site Project or any portion thereof after the Closing Date shall be paid by Developer.

21. Default.

21.1 Developer Default. The following events will constitute an "Event of Default" by Developer:

21.1.1 If Developer fails to pay taxes, costs of the Boundary Line Adjustment, permitting or other fees payable to the City in connection with obtaining the CSDP or other permits, fails to maintain insurance that substantially complies with Section 17.1 or any other amount required to be paid by Developer under this Agreement which is not paid within ten (10) days of the date when due; or

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21.1.2 If Developer fails to perform any material obligation under this Agreement on or before the date set forth in the Project Schedule (except as such date may be extended under the terms of this Agreement) including, without limitation, failure to apply for the CSDP or building permits on or before the dates set forth in the Project Schedule attached hereto as Schedule 2; or

21.1.3 If Developer has abandoned the Downtown Site Project by ceasing work on any Phase of the Downtown Site Project for a period of sixty (60) consecutive days (except for Unavoidable Delay for which notice was given as required under Section 12.3); or

21.1.4 If Developer has not obtained any building permit for any Phase of the Downtown Site Project within one (1) year following Closing for such Phase or any permit required for construction of any Phase of the Downtown Site Project is revoked or canceled; or

21.1.5 If Developer assigns, pledges or encumbers its rights, duties or obligations under this Agreement in violation of this Agreement; or

21.1.6 If any representation or warranty made by Developer as set forth in Section 19.2 is untrue or breached in any material respect; or

21.1.7 If Developer has not commenced construction of any Phase of the Downtown Site Project within thirty (30) days following issuance of the final building permit therefore (except for Unavoidable Delay for which notice was given as required under Section 12.3); or

21.1.8 If Substantial Completion of any Phase of the Downtown Site Project has not occurred for any reason whatsoever, except for Unavoidable Delay for which notice was given as required under Section 12.3, on or before the second (2nd) anniversary of the commencement of construction for such Phase; or

21.1.9 If Final Completion of any Phase of the Downtown Site Project has not occurred for any reason whatsoever, except for Unavoidable Delay for which notice was given as required under Section 12.3, on or before the third (3rd) anniversary of the commencement of construction for such Phase, or

21.1.10 If a petition for bankruptcy is filed by or against Developer or if Developer makes a general assignment for the benefit of Developer's creditors, or if a receiver is appointed on account of Developer's insolvency and any such petition or appointment is not dismissed within ninety (90) days.

21.2 City Remedies upon Developer Event of Default. Upon any Event of Default by Developer, the City shall give Developer written notice of the same, whereupon following receipt of such written notice Developer shall have thirty (30) days within which to commence all necessary action to cure any such Event of Default (and if such cure is commenced, proceed to diligently complete such cure within a reasonable period of time), except with respect to Events of Default set forth in Section 21.1.2, 21.1.3, 21.1.4, 21.1.7, 21.1.8, 21.1.9

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or 21.1.10 for which no cure period exists beyond the time period stated therein. In the event Developer fails to cure such Event of Default within the time period set forth above, the City shall be entitled to exercise one or more of the following remedies:

21.2.1 Prior to Closing of Property. With respect to an Event of Default by Developer occurring prior to Closing and with respect to the purchase of the Property, or any Phase thereof, which Event of Default has not been cured within any cure period provided in this Agreement, and provided the City is not in default hereunder, the City may terminate this Agreement with respect to any portions of the Property not yet closed by giving Developer written notice of such termination, and the Deposits, shall be forfeited to the City as liquidated damages and as the City's sole and exclusive remedy for such Event of Default as provided in Section 4.3 of this Agreement.

21.2.2 After Closing. With respect to an Event of Default occurring after Closing of the Property, or any Phase thereof, and relating to a post Closing obligation of Developer under this Agreement, which Event of Default has not been cured within any cure period provided in this Agreement, and provided the City is not in default hereunder, the City may: (a) terminate this Agreement with respect to any Phase of the Property not yet Closed by giving Developer written notice of such termination, or (b) seek specific performance of this Agreement with respect to the specific post Closing obligation which has resulted in the Event of Default, or (c) demand payment on any financial guarantee posted by Developer or any completion bond obtained by Developer, or (d) foreclose the City Mortgage and enforce any assignments of architect's agreements or construction contracts.

21.2.3 City Right of Repurchase. If an Event of Default under Section 21.1.7 has occurred or Developer has not received a final building permit within one (1) year following the Closing for a Phase, City shall have the right upon written notice to Developer delivered within six (6) months following the declaration of such Event of Default by City to terminate this Agreement with respect to any portions of the Property not yet closed and repurchase all Phases of the Property which are the subject of such default (collectively, the "Repurchase Parcels") for a purchase price equal to ninety five percent (95%) of the Purchase Price paid by Developer for the Repurchase Parcels under this Agreement. Closing of the City's repurchase shall occur within one hundred twenty (120) days following written notice and Developer will transfer title to the Repurchase Parcels to City by bargain and sale deed, free and clear of all liens and encumbrances except Permitted Exceptions. The Escrow Agent shall conduct the Closing and Closing costs and prorations shall be handled in the same manner as provided in Section 10 of this Agreement. If the City notifies Developer that it intends to repurchase the Repurchase Parcels, but fails to close the repurchase within one hundred twenty (120) days thereafter, City shall not be in default under this Agreement, but Developer shall have the right to sell the Repurchase Parcels to another developer expressly subject, however, to all of the terms, covenants, conditions and provisions set forth in this Agreement provided the proposed purchaser/developer is acceptable to the City, which approval may be withheld by the City in its reasonable discretion.

21.3 City Default; Remedies. If the City fails to perform any material obligation under this Agreement, Developer shall give the City written notice of same,

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whereupon following receipt of such written notice, the City shall have thirty (30) days within which to commence all necessary action to cure any such failure (and if cure is commenced with such thirty (30) day period, proceed to diligently complete such cure within a reasonable period of time). In the event the City fails to cure such failure within the time period set forth above and provided Developer is not in default hereunder, Developer will have the right to either (a) seek and obtain specific performance of the City's obligations hereunder or (b) terminate this Agreement and receive a refund of the Deposits as its sole and exclusive remedy for any such default; ~~provided, however, if specific performance is either unavailable or is commercially impracticable as a remedy for the City's default under this Agreement, the City will reimburse Developer, upon Developer's written demand (which will include reasonable supporting documentation), Developer's actual third party costs incurred in connection with the Downtown Site Project up to a maximum of \$250,000.~~

21.4 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

22. Dispute Resolution.

22.1 Policy. The parties shall use good faith efforts to resolve all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement, or the performance of services thereunder (each a "Matter in Dispute") using the procedures set forth herein.

22.2 Senior Management. If a Matter in Dispute arises, the aggrieved party shall promptly notify the other party to this Agreement in writing of the dispute, but in any event within fifteen (15) days after the dispute arises. If the parties shall have failed to resolve the Matter in Dispute within fifteen (15) days after delivery of such notice, each party shall nominate a senior officer of its management with authority to bind such party to meet at a mutually agreed location to attempt to resolve the Matter in Dispute. Should the Matter in Dispute involve the general contractor in any way, a senior officer of general contractor shall also attend the meeting. Should the senior officers be unable to resolve the Matter in Dispute within fifteen (15) days of their nomination, the parties shall submit the Matter in Dispute to Mediation as provided in Section 22.3 below as a condition precedent to pursuing other alternative dispute procedures or litigation.

22.3 Mediation. If prior to substantial completion of the Downtown Site Project, a dispute arises between the City and Developer regarding construction of the Downtown Site Project, the adequacy of any drawings or specifications or any other matter arising under this Agreement (except for the determination of a Purchase Price, which will be determined as set forth in Section 4.1), the parties shall proceed in good faith to resolve such dispute as expeditiously as possible and shall cooperate so that the progress of design and construction of the Downtown Site Project is not delayed. If, however, the parties are unable to resolve the dispute, they agree to utilize the mediation process contained herein, which will be

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nonbinding but a condition precedent to having said dispute decided in court by a judge or jury; provided, however, that the City and Developer may agree in writing to waive this condition.

22.3.1 Mediation Process. The City or Developer, by delivering written notice to the other, may refer any dispute described above to any natural person not employed by either the City or Developer or an affiliate of either who shall also be a construction professional with at least five (5) years' experience in the Seattle metropolitan commercial real estate market and any successor thereto, approved by the City and Developer ("Mediator").

22.3.2 Consideration of Disputes or Claims. Upon receipt by the Mediator of written notice of a dispute, either from the City or Developer, the Mediator shall convene a hearing to review and consider the dispute. Both the City and Developer shall be given the opportunity to present their evidence at this hearing. Both the City and Developer are encouraged to provide exhibits, calculations and other pertinent material to the Mediator prior to the hearing, for review.

22.3.3 Construction Site Visit. Upon receipt by the Mediator of written notice of a dispute either from the City or Developer, the Mediator may visit the Downtown Site to keep abreast of construction activities and to develop familiarity with the work in progress. The frequency, exact time, and duration of these visits shall be as mutually agreed upon among the Mediator, the City and Developer, but only as necessary to address a dispute. In the case of an alleged changed condition or construction problem, it will be advantageous, but not absolutely necessary, for the Mediator to view such conditions. Photographs and descriptions of these conditions by both parties will suffice, if a site visit by the Mediator would cause delay to the construction of the Downtown Site Project.

22.3.4 Procedures. Upon the first referral to the Mediator of a dispute hereunder, the Mediator shall, with the agreement of the parties, establish procedures for the conduct of any hearings for consideration of disputes and claims. The conduct of the Mediator's business shall, in general, be based on this Agreement and if applicable, the construction documents for the Downtown Site Project.

22.3.5 Independence of Mediator. It is expressly understood that the Mediator is to act impartially and independently in the consideration of facts and conditions surrounding any dispute presented by the City and Developer, and that the recommendations concerning any such dispute are advisory only. The Mediator's recommendations shall be based on the pertinent Agreement provisions, and the facts and circumstances involved in the dispute. The recommendations shall be furnished in writing to the parties.

22.3.6 City Responsibility. The City shall furnish the Mediator one copy of all documents it might have, other than those furnished by the Developer, which are pertinent to the performance of the Mediator.

22.3.7 Coordination. The parties will coordinate to effectively assist the Mediator's operation.

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22.3.8 Developer Responsibility. Developer shall furnish the Mediator one copy of all construction documents including all applicable contracts, interpretative geotechnical reports, progress schedule and updates, monthly progress reports, and other documents pertinent to the performance of this Agreement and necessary to the Mediator's work.

22.3.9 Payment. The fees charged by the Mediator shall be shared equally by the parties. Payments shall be full compensation for work performed, services rendered, and for all materials, supplies, travel, office assistance and support and incidentals necessary to serve. Payment for services rendered by the Mediator and for the Mediator's expenses shall be at the rate or rates established by the Mediator, which in any event shall not exceed the usual and customary rate or rates prevailing in King County, Washington, for mediation services of the sort described herein. The Mediator may submit invoices for payment for work completed not more often than once per month during the progress of the work. Such invoices shall be in format approved by both parties, and accompanied by a general description of activities performed during that period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the Mediator. The invoiced amount shall be divided in half and clearly stated. A copy is to be sent to each of the City and Developer for payment. Satisfactorily submitted invoices shall be paid within sixty (60) days.

22.4 Litigation. Only after the mediation has concluded may either party seek resolution of the Matter in Dispute through litigation and for any such litigation, jurisdiction and venue shall thereafter be in the Superior Court of the State of Washington, King County.

22.5 Waiver. Any waiver by either of the parties of any breach of any covenant herein contained to be kept and performed by the other party shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent the damaged party from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

23. Development Team/Transfers of Interest in Developer or Assignment of this Agreement.

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23.1 Development Team. It is Developer's intention to develop the Downtown Site Project in accordance with the Downtown Conceptual Plans attached to this Agreement as Exhibits C-1 through C-43. Developer acknowledges that in entering into this Agreement the City is relying upon the personal knowledge, expertise, and experience and financial resources of Developer, its affiliates and certain interested persons its principals and managing members. Such reliance includes Dan Rosenfeld ("Rosenfeld") as having an indirect beneficial owner continuing to hold a significant ownership interest in Developer and in Paul N. Keller ("Keller") and Matthew N. Burton ("Burton") each being actively involved in the management of Developer and also having an indirect beneficial ownership interest in Developer principals and, in the continued commitment of The City also is relying on Real Estate Capital Partners having made a commitment to Developer to provide financing for the Downtown Site Project and in the continued involvement of GGLO LLC as the Project Architect. All of the foregoing Developer represents to be accurate. (Rosenfeld, Keller, Burton, Real Estate Capital Partners and GGLO are each a "Development Team Member.") ~~in entering into this Amended and Restated Agreement.~~ Developer shall provide prompt written notice to the City ~~if any of of any material changes in the~~

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Development Team Members ~~cease to be involved with Developer as described herein~~. Upon receiving any such notice, and if the Development Team Member is not replaced within sixty (60) days with a person or entity equally qualified and otherwise acceptable to the City in the exercise of its reasonable discretion, the City shall have the right to terminate this Amended and Restated Agreement. Developer further acknowledges that its rights under this Amended and Restated Agreement may not be assigned nor its duties and obligations delegated (except to Construction Lender for financing purposes) prior to the Closing of the final Phase without the prior written consent of the City, which consent may be withheld in its reasonable discretion. In addition, at least once every twelve months, Developer shall provide a written report to the City or its consultant, Heartland, describing in reasonable detail the financial resources available to Developer and the status and extent of the commitment by Real Estate Capital Partners to Developer as it relates to the financing plan for the acquisition of the Property and completion of the Downtown Site Project. Upon request, the City, or Heartland as the City's consultant, shall also have the right, at least once every twelve months, to inspect and review the financial statements of and agreements entered into by Developer and affiliates of Developer for the purpose of verifying and ascertaining the financial resources available to Developer and extent and nature of the commitment made by Real Estate Capital Partners to Developer and the Downtown Site Project. All financial and other information made available to the City and Heartland shall be kept confidential to the extent permitted by applicable law.

23.2 Restrictions on Transfer of Interests in Developer. Developer may ~~(a) sell, transfer, convey or assign limited partner interests in Developer or interests in any member or manager of Developer or (b) admit additional or substitute limited partnersmembers in Developer or any member or manager in Developer, and the general partner of Developer may consent to a or (c) change or transfer of any limited partnerthe ownership interests in any member of Developer or any manager in Developer so long as, in each case, (i) Urban RECP Portfolio GP, LLC remains the general partner of Developer, (ii) remains the manager/members of Urban RECP Portfolio GP, LLC, (iii) Urban Partners, LLC has and retains, directly or indirectly, an affiliate of a controlling ownership interest in Urban RECP Portfolio GP, LLCDeveloper and (iv) Rosenfeld, Keller and Burton all, Paul N. Keller retains a significant beneficial ownership interests in Developerand Matthew N. Burton has a material and active involvement in the on-going management and development of the Property until after the Stabilized Occupancy of the entire Downtown Site Project. Any other transfer shall require the prior written consent of the City, which consent may be withheld by the City in its reasonable discretion.~~

23.3 Definition of Transfer. As used herein, a “transfer” includes any change the general partner of Developer or any mortgage, pledge or any sale, transfer, conveyance, assignment or other disposition of fifty percent (50%) or more of the limited partner interests in Developer (a “Controlling Interest”), whether voluntary or involuntary, by operation of law or otherwise, including transfers to a trustee in bankruptcy, receiver or assignee for the benefits of creditors, any merger, consolidation, liquidation or dissolution of Developer and includes the sale, transfer, mortgage, pledge or encumbrance of a Controlling Interest in Developer. The execution and delivery by Developer of any joint venture agreement, partnership agreement, declaration of trust, option or other agreement whereunder any other person may become entitled, directly or indirectly, to the rights of Developer under this Agreement, or other benefits

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derived or to be derived therefrom (except in accordance with the Approved Financing Plan or pursuant to Section 23.2) shall in each case be deemed to be a transfer of Developer's interest for the purpose of this Section 23 and shall require the prior written consent of City.

23.4 Prior Assignment/No Further Assignment of Agreement. Developer shall not voluntarily or involuntarily sell, transfer, convey, assign or otherwise dispose of its rights under this Agreement, in whole or in part prior to the Closing of the final Phase, without the prior written consent of the City, which consent may be withheld in its reasonable discretion. The City acknowledges that Developer may assign its rights under this Agreement to Construction Lender. The City acknowledges and consents to the prior assignment of this Agreement as described in Recital paragraph J above and, by signing this Amended and Restated Agreement, RECP/UP Kenmore, LP acknowledges that it has assumed, and does hereby assume, all of the obligations and liabilities of its predecessor in interest, Kenmore Partners, LLC, and RECP/UP Kenmore, LP is and shall be regarding as the Developer for all purposes related to this Amended and Restated Agreement.

23.5 No Transfer of Downtown Site Project Prior to Stabilized Occupancy. Prior to Stabilized Occupancy of the Downtown Site Project, except as provided in Section 23.2 above, Developer shall not sell, transfer, lease (other than space leases of the retail space without options to purchase), convey, encumber (except to Construction Lender) or enter into a contract of sale or other conveyance of all or any part of or any interest in the Downtown Site Project (except for the sale of a parcel to the Affordable Housing Developer for development of the 100 Affordable Housing Units in accordance with the provisions of Section 23.6 below and the sale to individual homeowners of a townhouse or condominium unit upon final completion of that townhouse or condominium unit) without the prior written consent of City, which consent may be withheld by City in its reasonable discretion. For purposes of this Agreement, the Downtown Site Project shall have reached Stabilized Occupancy when both (A) eighty-five percent (85%) of all residential units have been sold or leased for a period of three (3) consecutive months, and (B) eighty percent (80%) of all retail or commercial space has been leased and seventy percent (70%) of such retail or commercial tenants are in occupancy and have been paying rent under the terms of their leases for a period of three (3) consecutive months.

23.6 Sale to Affordable Housing Developer. Notwithstanding any provision of this Agreement to the contrary, Developer shall have the right to transfer a parcel of the Property to Affordable Housing Developer, on the express condition that the Affordable Housing Developer shall assume all obligations of the Developer under this Agreement with respect to the timely development of not less than 100 Affordable Housing Units pursuant to an assumption agreement in form and substance satisfactory to City and with no cost payable by the Affordable Housing Developer for the land on which the Affordable Housing Project will be located. Affordable Housing Developer shall also execute, deliver and record the Affordable Housing Covenant as a condition to Closing of the purchase of the land (which covenant shall be approved by the parties hereto no later than the date Developer submits its application for a CSDP).

24. Taxes and Contributions. Developer assumes full and exclusive responsibility and liability for withholding and paying as may be required by law all federal, state and local

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taxes and contributions with respect to, assessed against, or measured by Developer's earnings hereunder, or salaries or other contributions or benefits paid or made available to any persons retained, employed or used by or for Developer in connection with its services, and any and all other taxes and contributions applicable to its services for which Developer may be responsible under any laws or regulations, and shall make all returns and/or reports required in connection with any and all such laws, regulations, taxes, contributions and benefits.

25. Miscellaneous.

25.1 Burden and Benefit. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and permitted assigns of the respective parties hereto.

25.2 No Continuing Waiver. Any waiver by either of the parties of any breach of any covenant herein contained to be kept and performed by the other party shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent the damaged party from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

25.3 Nondiscrimination. Developer will not discriminate and shall ensure that its consultants and all contractors engaged by Developer in connection with the Downtown Site Project comply with all applicable federal, state and local discrimination laws, rules and regulations. Any violation of this provision shall be considered an Event of Default under this Agreement and the City shall have all of the rights and remedies provided under Section 20 of this Agreement.

25.4 Neutral Authorship. In connection with the execution and delivery hereof, each party has been represented by counsel. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

25.5 Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

25.6 Complete Agreement; Amendment. This Agreement, together with the exhibits annexed hereto or referred to herein, is intended to be the entire agreement of the parties with regard to the subject matter hereof and may only be amended with the written consent of both parties.

25.7 Severability. Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future

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law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

25.8 Relationship of Parties. Developer and the City shall not be construed as joint venturers or general partners, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Developer shall have no right or authority, express or implied, to commit or otherwise obligate the City in any manner whatever except to the extent specifically provided herein or specifically authorized in writing by the City. The City shall have no right or authority, express or implied, to commit or otherwise obligate Developer in any manner whatever except to the extent specifically provided herein or specifically authorized in writing by Developer.

25.9 No Third Party Rights. The provisions of this Agreement are intended solely for the benefit of, and may only be enforced by, the parties hereto and their respective successors and permitted assigns. None of the rights or obligations of the parties herein set forth (or implied) is intended to confer any claim, cause of action, remedy, defense, legal justification, indemnity, contribution claim, set-off, or other right whatsoever upon or otherwise inure to the benefit of any contractor, architect, consultant, subcontractor, worker, supplier, mechanic, architect, insurer, surety, guest, member of the public, or other third parties having dealings with either of the parties hereto or involved, in any manner, in the Property.

25.10 Representatives.

25.10.1 Representatives of Developer. Developer shall consult with the City on initial assignments of personnel assigned to the Downtown Site Project. Developer agrees that the person with overall responsibility for the work for the Downtown Site Project shall be Matthew N. Burton. The Project Manager shall be Matthew N. Burton. The City shall have the right to approve any changes in the personnel named above, such approval not to be unreasonably withheld.

25.10.2 Representatives of City. The City shall designate a representative authorized to act on the City's behalf with respect to the Downtown Site Project. The City or such authorized representative shall promptly render decisions to avoid delay in the orderly process of design and construction of the Downtown Site Project. The initial representative of the City shall be the City Manager or his designee. The City shall communicate with the contractors and the architects only through Developer. The City's representative may be changed by the City from time to time.

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

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The City: City of Kenmore
6700 NE 181st Street
P.O. Box 82607
Kenmore, Washington 98028-0607
Attn: Frederick Stouder, City Manager
Telephone: (425) 398-8900
Facsimile: (425) 481-3236

With a copy to: Rod P. Kaseguma
Inslee, Best, Doezie & Ryder, P.S.
777 108th Avenue NE, Suite 1900
Bellevue, Washington 98009-9016
Telephone: (425) 450-4241
Facsimile: (425) 635-7720

With a copy to: Perkins Coie LLP
10885 NE 4th Street, Suite 700
Bellevue, Washington 98004-5579
Attn: Craig H. Shrontz
Telephone: (425) 635-1404
Facsimile: (425) 635-2404

With a copy to: Heartland, LLC
524 Second Avenue, Suite 200
Seattle, Washington 98104-2323
Attn: James S. Reinhardtsen, Managing Director
Telephone: (206) 682-2500
Facsimile: (206) 467-1429

Developer: RECP/UP Kenmore, LP
The Bradbury Building
304 S. Broadway, Suite 400
Los Angeles, California 90013
Attn: Matthew N. Burton, Principal
Telephone: (213) 437-0470
Facsimile: (213) 437-0474

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

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

25.12 Non Waiver of Governmental Rights. Nothing contained in this Agreement shall require the City to take any discretionary action relating to development of the improvements to be constructed on the Property as part of the Downtown Site Project, including, but not limited to, zoning and land use decisions, permitting, or any other governmental approvals.

25.13 Captions. The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement.

25.14 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

25.15 Further Assurance. Each party hereto agrees that it will execute or furnish such documents and further assurances to the other or to proper authorities as may be necessary for the full implementation and consummation of this Agreement and the transactions contemplated hereby.

25.16 Authority. Each of the persons signing below represents and warrants that it has the requisite authority to bind the party on whose behalf it is signing.

25.17 Time Is of the Essence. Time is of the essence of this Agreement. All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday or such holiday, the period shall be extended to the next business day.

25.18 No Brokers. Each party represents to the other that no brokers have been involved in this transaction or the sale of the Property to Developer pursuant to the provisions of this Agreement. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection with any provision of this Agreement, the City, if such claim is based upon any agreement alleged to have been made by the City, hereby agrees to indemnify Developer against and hold Developer harmless from any and all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorneys' fees and costs) which Developer may sustain or incur by reason of such claim, and Developer, if such claim is based upon any agreement alleged to have been made by Developer, hereby agrees to indemnify the City against and hold the City harmless from any and all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorneys' fees and costs) which the City may sustain or incur by reason of such claim. The provisions of this Section 25.18 shall survive the termination of this Agreement or the Final Completion of the Downtown Site Project on the Property.

25.19 Employees of Developer. Developer is acting under this Agreement as an independent contractor and nothing herein contained, or any acts of Developer or the City, nor any

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other circumstances, shall be construed to establish Developer as an agent of the City. Developer shall be responsible for each of Developer's employees or other persons performing services to be performed by Developer hereunder and for determining the manner and time of performance of all acts to be performed by Developer hereunder.

25.20 Memorandum of Agreement. Promptly following execution hereof the parties shall record a Memorandum of this Agreement in the form attached hereto as Exhibit I in the real property records of King County, Washington.

25.21 Attorneys' Fees. Each party shall be responsible for payment of the legal fees of its counsel in the event of any litigation, mediation, arbitration or other proceeding brought to enforce or interpret or otherwise arising out of this Agreement.

25.22 WAIVER OF JURY TRIAL. CITY AND DEVELOPER HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING OUT OF THIS AGREEMENT, WHETHER NOW OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE AND HEREBY CONSENT AND AGREE THAT ANY SUCH CLAIM SHALL BE DECIDED BY TRIAL WITHOUT A JURY. EITHER PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE WAIVER AND AGREEMENT CONTAINED HEREIN.

25.23 Survival of Provisions. Except as otherwise expressly provided herein, the covenants, representations, agreements, terms and provisions contained herein shall survive and shall not be deemed to have merged with or into the Deed.

25.24 Exhibits. The Exhibits hereto are made a part of and incorporated into this Agreement.

25.25 Conflicts of Interests. No member, official or employee of the City shall make any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

25.26 Non-Liability of City Officials, Employees, and Agents. No member, official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

25.27 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington, without regard to principles of conflict of laws, and venue of any action brought to enforce this Agreement shall lie exclusively in King County Superior Court. The parties hereto consent to the jurisdiction of the King County Superior Court and waive the right to file suit elsewhere.

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25.28 Signage. The City acknowledges that, during and after construction, Developer may request variances to the City's criteria with respect to signage for the Downtown Site. City agrees to process such requests for variances in good faith and in a manner consistent with the same process it utilizes to consider all requests for variances under the Kenmore Municipal Code.

The parties have executed this Agreement effective as of the date first above written.

DEVELOPER:

RECP/UP KENMORE, LP, a Delaware
limited partnership

By: Urban RECP Portfolio GP, LLC,
a Delaware limited liability company,
Its General Partner

By: _____
Matthew N. Burton, Vice President

CITY:

CITY OF KENMORE, a Washington
municipal corporation

By: _____
Name: _____
Title: _____

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EXHIBIT A

Definitions

The following terms are defined in the sections shown below.

Affordable Housing Covenant	Section 8.5
Affordable Housing Developer	Section 8.5
Affordable Housing Project	Section 8.5
Affordable Housing Units	Section 2.2
Approved Building Permit Documents	Section 13.4
Boundary Line Adjustment	Section 3.4
Building Permit Documents	Section 13.3
CC&Rs	Section 15
City Mortgage	Section 4.6
City Title Policy	Section 5.2
Closing	Section 10.1
Closing Date	Section 10.1
Construction Lender	Section 14.1
Construction Mortgage	Section 14.1
Controlling Interest	Section 23.3
CSDP	Section 13.1
Deed	Section 5.1
Deposits	Section 4.2.1
Development Parameters	Section 2.1
Downtown Conceptual Plans	Recital G
Downtown Site	Recital C
Downtown Site Project	Section 2.1
Due Diligence Period	Section 4.4
Effective Date of this Amended and Restated Agreement	Introduction
Environmental Reports	Section 4.4.2
Escrow Agent	Section 4.8
Event of Default	Section 21.1
Hazardous Substances	Section 4.4.2

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Indemnification Claim Notice	Section 17.3
Letter of Credit	Section 4.2.1
Matter In Dispute	Section 22.1
Mediator	Section 22.3.1
Minimum Criteria	Section 2.3
Permitted Exceptions	Section 5.3.1
Phase	Section 2.2
Phase I, Stage I, SR 522 Improvements	Section 2.2.4
Property	Recital H
Purchase Price	Section 4.1
Supplement to the Title Commitment	Section 5.3.4
Title Commitment	Section 5.3
Title Company	Section 4.8
Title Policy	Section 5.2
Transfer	Section 23.3
Unavoidable Delay	Section 12.3

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EXHIBIT B
Current Legal Description of the Downtown Site

Order Number: 206137193

ALL OF BLOCK 13, NORTHLAKE TERRACE ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 33 OF PLATS, PAGE(S) 20 AND 21, RECORDS OF KING COUNTY, WASHINGTON;
AND THE 20-FOOT VACATED ALLEY LYING WITHIN SAID BLOCK AND A 20-FOOT VACATED ALLEY ADJOINING THE NORTHERLY LINE OF LOT 10 THEREOF; AND THAT PORTION OF VACATED KENMORE AVENUE, NOW 67TH AVENUE NORTHEAST, WHICH LIES EASTERLY OF A LINE DRAWN 390 FEET WEST OF AND DISTANT FROM THE EAST BOUNDARY LINE OF BLOCK 13 OF SAID ADDITION;

EXCEPT THE WEST 150 FEET THEREOF.

Order Number. 206137194

THE WEST 150 FEET OF THE FOLLOWING:

ALL OF BLOCK 13, NORTHLAKE TERRACE ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 33 OF PLATS, PAGE(S) 20 AND 21, RECORDS OF KING COUNTY, WASHINGTON;
AND THE 20-FOOT VACATED ALLEY LYING WITHIN SAID BLOCK AND A 20-FOOT VACATED ALLEY ADJOINING THE NORTHERLY LINE OF LOT 10 THEREOF; AND THAT PORTION OF VACATED KENMORE AVENUE, NOW 67TH AVENUE NORTHEAST, WHICH LIES EASTERLY OF A LINE DRAWN 390 FEET WEST OF AND DISTANT FROM THE EAST BOUNDARY LINE OF BLOCK 13 OF SAID ADDITION.

Order Number: 206137196

PARCEL A:

VACATED LOTS 8 AND 9, BLOCK 12, NORTHLAKE TERRACE ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 33 OF PLATS, PAGE(S) 20 AND 21, RECORDS OF KING COUNTY, WASHINGTON;

TOGETHER WITH THE SOUTH HALF OF VACATED NORTHEAST 182ND STREET ADJACENT THERETO;
AND TOGETHER WITH ALL THAT PORTION OF VACATED 67TH AVENUE NORTHEAST THAT LIES WEST OF A LINE DRAWN 390 FEET WEST OF THE EAST LINE OF BLOCK 13 OF SAID ADDITION, AND SOUTH OF THE CENTER LINE OF SAID VACATED NORTHEAST 182ND STREET, EXTENDED EAST.

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PARCEL B:

AN EASEMENT FOR ACCESS AND PARKING AS GRANTED IN RECORDING NOS. 9405260850 AND 9703111175.

Order Number: 206137197

PARCEL A:

THAT PORTION OF THE EAST 720 FEET OF GOVERNMENT LOT 1, SECTION 11, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING NORTH OF THE PLAT OF NORTHLAKE TERRACE ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 33 OF PLATS, PAGES 20 AND 21, IN KING COUNTY, WASHINGTON, AND LYING SOUTH OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT THAT IS 300.00 FEET SOUTH OF THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 1 AS MEASURED ALONG THE EAST LINE THEREOF; THENCE NORTH 87°44'38" WEST PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 190.34 FEET TO A POINT DESIGNATED AS POINT "A" (FOR REFERENCE PURPOSES); THENCE CONTINUE NORTH 87°44'38" WEST ALONG SAID LINE, A DISTANCE OF 529.67 FEET TO THE WEST LINE OF SAID EAST 720 FEET OF GOVERNMENT LOT 1 AND THE TERMINUS OF SAID LINE;

EXCEPT THE EAST 30 FEET THEREOF CONVEYED TO KING COUNTY FOR ROAD BY DEED RECORDED UNDER RECORDING NUMBER 2963377.

PARCEL B:

AN EASEMENT FOR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED TRACT OF LAND:

BEGINNING AT A POINT THAT IS 300.00 FEET SOUTH OF THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 1 AS MEASURED ALONG THE EAST LINE THEREOF; THENCE NORTH 87°44'38" WEST PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 190.34 FEET TO A POINT DESIGNATED AS POINT "A" AND THE TRUE POINT OF BEGINNING OF THIS TRACT;

THENCE NORTH 87°44'38" WEST PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 446.01 FEET TO A POINT ON A CURVE, FROM WHICH THE RADIAL POINT OF SAID CURVE BEARS NORTH 84°37'32" WEST, A DISTANCE OF 488 FEET;

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THENCE ALONG SAID CURVE TO THE LEFT, WITH A CENTRAL ANGLE OF 07°36'03", AN ARC DISTANCE OF 64.76 FEET;
THENCE NORTH 02°13'36" WEST, A DISTANCE OF 93.92 FEET;
THENCE ON A 512-FOOT RADIUS TANGENT CURVE TO THE RIGHT WITH A CENTRAL ANGLE OF 04°45'55" AN ARC DISTANCE OF 42.58 FEET;
THENCE NORTH 02°32'19" EAST, A DISTANCE OF 89.14 FEET, TO THE SOUTH RIGHT-OF-WAY LINE OF N.E. 185TH STREET AS RECORDED UNDER RECORDING NUMBER 4791700, SAID POINT IS 10.00 FEET SOUTH OF, WHEN MEASURED AT RIGHT ANGLES FROM, SAID NORTH LINE OF GOVERNMENT LOT 1;
THENCE SOUTH 02°32'19" WEST, A DISTANCE OF 89.26 FEET;

THENCE ON A 488-FOOT RADIUS TANGENT CURVE TO THE LEFT, WITH A CENTRAL ANGLE OF 04°45'55", AN ARC DISTANCE OF 40.59 FEET;
THENCE SOUTH 02°13'36" EAST, A DISTANCE OF 93.92 FEET;
THENCE ON A 512-FOOT RADIUS TANGENT CURVE TO THE RIGHT, WITH A CENTRAL ANGLE OF 03°22'02", AN ARC DISTANCE OF 30.09 FEET TO A POINT OF REVERSE CURVATURE;
THENCE ON A 25-FOOT RADIUS CURVE TO THE LEFT, WITH A CENTRAL ANGLE OF 88°53'04", AN ARC DISTANCE OF 38.78 FEET;
THENCE SOUTH 87°44'38" EAST PARALLEL WITH SAID NORTH LINE, A DISTANCE OF 287.18 FEET;
THENCE ON A 502.90-FOOT RADIUS CURVE TO THE RIGHT, WITH A CENTRAL ANGLE OF 12°32'32", AN ARC DISTANCE OF 110.09 FEET TO POINT "A" AND THE TRUE POINT OF BEGINNING.

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Exhibit C



Kenmore Village by-the-lake

Downtown Revitalization • Building Community



This draft Conceptual Plan for Kenmore Village by the Lake is a discussion document for the community of Kenmore, Washington. It builds on results from more than eight years of public meetings, Downtown Task Force workshops and City Council actions. Public priorities identified through this process and incorporated into the Kenmore Downtown Plan include . . .

- Business retention and attraction
- High amenity, high density housing
- A destination community gathering space
- A variety of parking solutions
- Loop road and non-motorized circulation
- Unique, mixed-use, human-scale and pedestrian-friendly design
- Responsiveness to the market
- Fiscal responsibility

On April 17, 2006, the Kenmore City Council approved Kenmore Partners, LLC to prepare a Conceptual Plan for the Northwest Quadrant of downtown.

Process

This Conceptual Plan builds on the thorough and careful planning process conducted by the City of Kenmore. Public meetings on a comprehensive downtown plan commenced in 1999 and continued through the following years, resulting in adoption of the Kenmore Comprehensive Plan in 2001. A draft Environmental Impact Statement (EIS) was prepared in 2000 and adopted as a final EIS in 2001. In April 2003, elements of the Comprehensive Plan were amended, including land use, transportation, parks, recreation and open space, culminating in adoption of the Kenmore Downtown Plan in 2003. In 2005, Kenmore business owners were again interviewed regarding their specific goals for downtown revitalization.

In November 2005, the City issued a Request for Qualifications for the revitalization of the Northwest Quadrant of downtown. Several firms responded in January 2006, with two firms selected for the final round of public evaluation. Additional information was requested from both submitters and public hearings were held on February 8, March 15 and 29 and April 11, 2006. On April 17, Kenmore Partners was selected and authorized to prepare a Conceptual Plan by August 31, 2006.

During the Plan preparation process, the planning team has met with the Kenmore City Council, City staff and consultants, the Downtown Task Force, Kenmore Heritage Society and many individuals and organizations representing downtown stakeholders.

Overview



KENMORE PARTNERS LLC



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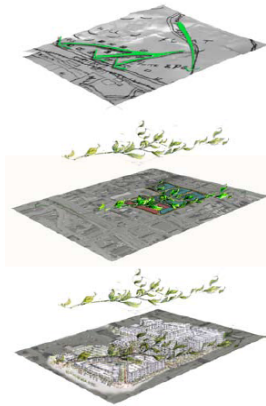
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Kenmore Village by-the-lake

Downtown Revitalization • Building Community



A Conceptual Plan must, of course, have guiding "concepts." This Plan is organized around eight such concepts . . .

1. Four Quadrants Together

The Plan describes the development potential of the Northwest Quadrant. It is anticipated that development of the other three quadrants will be coordinated to maximize benefits to the entire community.

2. Pedestrian-Oriented Main Street

The Conceptual Plan identifies NE 181st Street as a pedestrian-oriented retail shopping street with the character and ambience of a traditional downtown "Main Street." State Route 522, Bothell Way, will remain the predominant east-west subcollector thoroughfare, but NE 181st has the potential to become a true village-scaled shopping street. Wide sidewalks, shade trees, benches, ornamental lamp posts, diagonal parking and other "traffic-calming" measures will enhance the pedestrian experience along this street.

3. Trail to the Lake

Following original 1905 maps, we have identified an historic pathway traversing from north to south through Kenmore. We have recreated this historic circulation path as a "Trail to the Lake," connecting Totl Pipeline with the Burke Gilman trail and, eventually, with a restored Kenmore waterfront. The trail will create an attractive pedestrian and bicycle circulation route on a north-south axis through downtown.

4. Community Gathering Place

Central to the Concept is a shaded community gathering place for holiday celebrations, festivals, markets and other community events. We look forward to joining the community in programming a wide range of activities for this central space. A significant fountain or other water feature is planned. Details of community space design will be developed through an interactive community participation process. Other community and private "green" spaces are also provided.

5. Mixed-Use Village

The Conceptual Plan includes a mix of uses including ground floor retail and restaurant spaces, townhouses, flats and other housing choices at a variety of price levels, and community and private open spaces, all stepping gently up the hill to maximize lake and mountain views. Adequate, secure and covered parking is also provided.

6. Economic Development

An essential goal of the Plan is to foster economic development and prosperity, not just on this site, but throughout downtown and all of Kenmore. Jobs, retail sales, tax revenues and other significant public benefits are anticipated. Special efforts will be made to retain existing merchants and to recruit new and exciting restaurants and stores.

7. Sustainable Design

Recycled materials, passive and active solar heating systems, ground water filtration and recharge features and a very large and attractive "green" roof, with both private "p-patch" gardens and community open space, are part of the design and operation of the Plan.

8. Lessons Learned

The design team has carefully studied public comments from community meetings over the past eight years. Design features of the Plan are tailored to meet the community objectives we have heard. We look forward to continuing this process of public/private participation.

Concepts



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Kenmore Village by-the-lake

Downtown Revitalization • Building Community



Ground-level
Pedestrian Access



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Exhibit C-1
Conceptual Site Plan for Downtown Site
(SEPA Alternative A)



Kenmore Village by-the-lake

Downtown Revitalization • Building Community



Alternate A-B
Conceptual Plan
+45' Level
 0' 100'
 approx. 1" = 120'



KENMORE PARTNERS LLC



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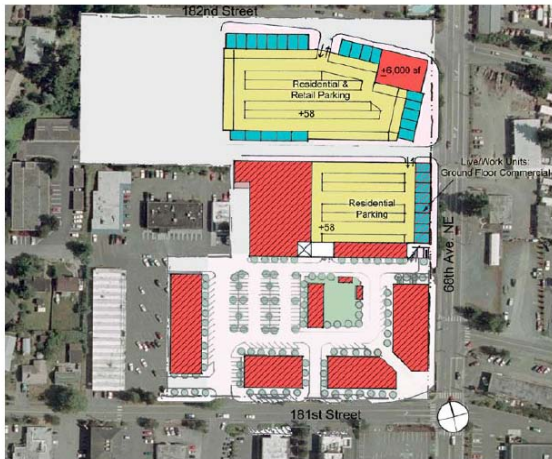
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Kenmore Village by-the-lake

Downtown Revitalization • Building Community



Alternate A-B Conceptual Plan +58' Level

0' 100'
approx 1" = 120'



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Kenmore Village by-the-lake Downtown Revitalization • Building Community



Alternate A-B
Conceptual Plan
+68' Level
0' 100'
approx 1" = 120'



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Kenmore Village by-the-lake

Downtown Revitalization • Building Community



Alternate A-B Conceptual Plan

+78' Level
0' 100'
approx 1" = 120'



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Kenmore Village by-the-lake

Downtown Revitalization • Building Community

Land Use Program - Alternate A 08 June 2007

Lower Site (DC Zone)	Retail Area (sf)	Residential Area (sf)	Unit Count	Structured Parking Area (sf)	Structured Parking Provided (spaces)	Surface Parking Provided (spaces)	Street Parking Provided (spaces)	(1) Total Parking Provided (spaces)	(2) Total Parking by EIR (spaces)	(3) Total Parking by Code (spaces)
Grocery	24,000	-	-	-	120	-	-	120	60	60
Other	47,000	-	-	-	23	104	13	140	140	157
Affordable Housing	-	68,000	100	-	60	-	-	60	20	170
Total	71,000	68,000	100	64,000	183	104	13	310	349	407
Total Building Area (sf)	224,000									
Upper site (DR Zone)										
Apartment	5,000	-	-	6,237	18	-	-	18	18	30
Townhomes	-	51,300	97	24,140	89	-	-	89	89	97
Mid-rise over retail (4.5 hrs)	-	81,428	80	33,660	97	-	-	97	97	128
Mid-rise 2 (4.5 hrs)	-	88,179	87	36,640	100	-	-	100	100	148
Mid-rise 3 (4.5 hrs)	-	80,109	78	32,106	92	-	-	92	92	128
Total	5,000	301,106	300	133,287	396	0	0	396	396	535
Total Building Area	440,380									
Entire Site										
Total	77,000	589,106	400	197,287	574	104	13	691	690	837
Total Building Area	884,380									
Total Parking (spaces)	691									
Site Area (acres)	9.8									
					Residential Units per Acre					
					41.7					
(1) Parking provided (EIR) Grocery: 0.0 stalls/1000 sf Other retail: 2.37 stalls/1000 sf Residential: 1.21 stalls per unit Senior affordable residential: 0.5 stalls per unit										
(2) Parking required (EIR) Grocery: 2.48 stalls/1000 sf Retail: 1 per 300 sf Residential: 1.7 stalls per unit Average based:										
(3) Parking required (code) Retail: 1 per 300 sf Residential: 1.7 stalls per unit Average based: Office: 1.0 stall per unit 1 DR: 1.0 stall per unit 2 DR: 1.5 stalls per unit 3 DR: 1.7 stalls per unit Guests: 1 stall per 5 units										

Alternate A
Conceptual Plan
Program



KENMORE PARTNERS LLC



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Kenmore Village by-the-lake

Downtown Revitalization • Building Community



Alternate A-B
Conceptual Illustration



KENMORE PARTNERS LLC



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EXHIBIT C-2
Conceptual Site Plan for Downtown Site
(SEPA Alternative B)



Kenmore Village by-the-lake

Downtown Revitalization • Building Community



Alternate A-B
Conceptual Plan
+45' Level
 0' 100'
 approx. 1" = 120'



KENMORE PARTNERS LLC



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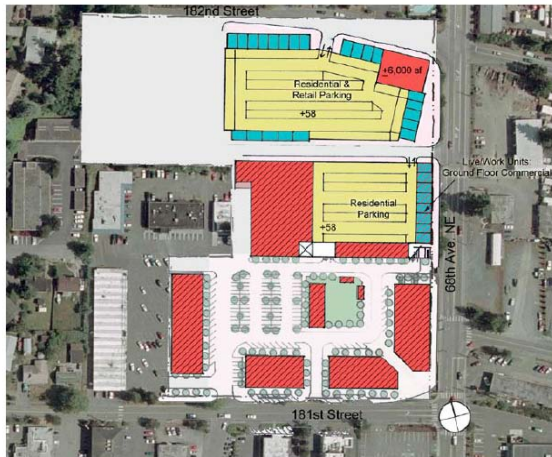
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Kenmore Village by-the-lake

Downtown Revitalization • Building Community



Alternate A-B Conceptual Plan +58' Level

0' 100'
approx 1" = 120'



KENMORE PARTNERS LLC



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Kenmore Village by-the-lake
Downtown Revitalization • Building Community



Alternate A-B
Conceptual Plan
+68' Level
0' 100'
approx 1" = 120'



KENMORE PARTNERS LLC



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Kenmore Village by-the-lake

Downtown Revitalization • Building Community



Alternate A-B Conceptual Plan

+78' Level
0' 100'
approx 1" = 120'



KENMORE PARTNERS LLC



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Kenmore Village by-the-lake

Downtown Revitalization • Building Community

Land Use Program - Alternate B 08 June 2007

	Retail Area (sf)	Residential Area (sf)	Unit Count	Structured Parking Area (sf)	Structured Parking Provided (stalls)	Surface Parking Provided (stalls)	Street Parking Provided (stalls)	(1) Total Parking Provided (stalls)	(2) Total Parking by BID (stalls)	(3) Total Parking by Code (stalls)
Lower Site (DC Zone)										
Grocery	24,000	-	-	-	120	-	-	120	80	80
Other	47,000	-	-	-	23	106	13	142	140	137
Affordable Housing	-	150,000	150	-	75	-	-	75	75	255
Total	71,000	150,000	150	64,000	219	106	13	338	274	492

Total Building Area (sf)

286,000

Upper Site (DR Zone)

Retail	0,000	-	-	6,237	18	-	-	18	18	20
Townhomes	-	51,300	51	24,140	89	-	-	89	89	97
Mid-rise over retail (4.5 M/s)	-	51,420	30	33,115	108	-	-	108	109	153
Mid-rise 2 (4.5 M/s)	-	85,179	107	45,315	129	-	-	129	129	182
Mid-rise 3 (4.5 M/s)	-	81,100	96	41,650	116	-	-	116	116	163
Total	0,000	187,199	183	154,482	441	0	0	441	441	615

Total Building Area

481,688

Entire Site

Total	77,000	481,198	333	218,482	659	106	13	779	715	1,107
-------	--------	---------	-----	---------	-----	-----	----	-----	-----	-------

Total Building Area

748,688

Total Parking (stalls):

779

Site Area (acres)

8.8

Residential Units per Acre

62.1

(1) Parking provided
Grocery: 6.0 stalls/1000 sf
Other retail: 2.97 stalls/1000 sf
Residential: 1.21 stalls per unit
Senior affordable residential: 0.5 stalls per unit

(2) Parking required (DCB)
Grocery: 2.48 stalls/1000 sf
Retail: 2.97 stalls/1000 sf
Residential: 1.21 stalls per unit
Senior affordable residential: 0.5 stalls per unit

(3) Parking required (code)
Retail: 1 per 500 sf
Residential: 1.7 stalls per unit
Average based

Stalls: 1.0 stall per unit
1.88: 1.0 stall per unit
2.08: 1.5 stalls per unit
3.08: 1.7 stalls per unit
Overall: 1 stall per 5 units

Alternate B
Conceptual Plan
Program



KENMORE PARTNERS LLC



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Kenmore Village by-the-lake

Downtown Revitalization • Building Community



Alternate A-B
Conceptual Illustration



KENMORE PARTNERS LLC



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EXHIBIT C-3
Conceptual Site Plan for Downtown Site
(SEPA Alternative C)



Kenmore Village by-the-lake

Downtown Revitalization • Building Community



Alternate C
Conceptual Plan
+45' Level
0' 100'
approx 1" = 120'



KENMORE PARTNERS LLC



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Kenmore Village by-the-lake

Downtown Revitalization • Building Community



Alternate C Conceptual Plan +58' Level

0' 100'
approx. 1" = 120'



KENMORE PARTNERS LLC



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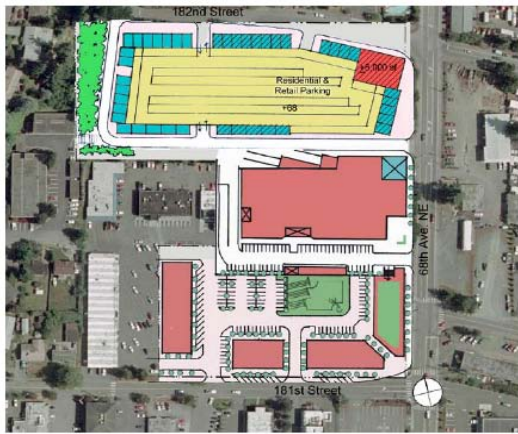
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Kenmore Village by-the-lake

Downtown Revitalization • Building Community



Alternate C Conceptual Plan +68' Level

0' 100'
Approx 1" = 120'



KENMORE PARTNERS LLC



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Kenmore Village by-the-lake

Downtown Revitalization • Building Community



Alternate C Conceptual Plan +78' Level

0' 100'
Approx 1" = 120'



KENMORE PARTNERS LLC



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Kenmore Village by-the-lake

Downtown Revitalization • Building Community

Land Use Program - Alternate C 08 June 2007

Lower Site (DC Zone)	Retail Area (sf)	Residential Area (sf)	Unit Count	Structured Parking Area (sf)	Structured Parking Provided (spaces)	Surface Parking Provided (spaces)	Street Parking Provided (spaces)	(1) Total Parking Provided (spaces)	(2) Total Parking by SD (spaces)	(3) Total Parking by Code (spaces)		
Grocery	45,000	-	-	-	175	50	-	225	112	100		
Other	55,250	-	-	-	27	109	13	149	149	158		
Affordable Housing	-	75,000	100	-	50	-	-	50	50	170		
Total	100,250	75,000	100	8,650	252	159	13	424	311	428		
Total Building Area (sf)	269,850											
Upper Site (DR Zone)												
Small	8,000	-	-	6,237	18	-	-	18	18	20		
Townhomes	-	51,200	37	24,140	69	-	-	69	69	37		
Mid-rise over retail (A-5 Mix)	-	91,428	80	33,600	97	-	-	97	97	139		
Mid-rise 2 (A-5 Mix)	-	48,175	87	38,845	108	-	-	108	108	148		
Mid-rise 3 (A-5 Mix)	-	65,100	76	31,140	97	-	-	97	97	120		
Total	8,000	205,803	300	133,962	391	0	0	391	381	629		
Total Building Area	440,593											
Entire Site												
Total	108,250	276,108	400	222,867	693	159	13	805	692	1,018		
Total Building Area	700,243								Total Parking (spaces):		806	
Site Area (acres)	8.6								Residential Units per Acre:			41.7
(1) Parking provided: Grocery: 0.5 stalls/1000 sf Other retail: 2.57 stalls/1000 sf Residential: 1.21 stalls per unit Senior affordable residential: 0.5 stalls per unit (2) Parking required (SD): Grocery: 2.48 stalls/1000 sf Retail: 2.97 stalls/1000 sf Residential: 1.21 stalls per unit Senior affordable residential: 0.5 stalls per unit (3) Parking required (code): Retail: 1 per 300 sf Residential: 1.7 stalls per unit Average based: Stalls: 1.0 stall per unit 1 SR: 1.0 stall per unit 2 SR: 1.5 stalls per unit 3 SR: 1.7 stalls per unit Overall: 1 stall per 0.5 units												

Alternate C
Conceptual Plan
Program



KENMORE PARTNERS LLC



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Kenmore Village by-the-lake

Downtown Revitalization • Building Community



Alternate C
Conceptual Illustration



KENMORE PARTNERS LLC



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EXHIBIT C-4
Development Parameters
[add]

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EXHIBIT D
Phase I, Stage I SR 522 Improvements

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EXHIBIT E
List of Environmental Reports

Copies of the following sent to Kenmore Partners, LLC May 22, 2006:

1. Phase I Environmental Site Assessment
Kenmore Village Shopping Center
Dated April 3, 2003
Prepared by GeoEngineers
2. July 03, 2003 letter from GeoEngineers to Trammel Crow
Environmental Review and Opinion
Kenmore Shopping Center
3. Kenmore Downtown Plan Market Study dated May, 2005
Prepared by Property Counselors
In Association With Mizrahi and Associates/CB Richard Ellis
4. Report
Focused Phase II Environmental Site Assessment
Kenmore Village Shopping Center
Dated September 12, 2003
Prepared by GeoEngineers

Emailed and mailed copy of the following to Cwennan Coral at Kenmore Partners, LLC
May 18, 2007:

1. Phase I Environmental Site Assessment
King County Northshore Park & Ride Site
18149 68th Ave. NE
Dated December 27, 2004
Prepared by GeoEngineers

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EXHIBIT F
Bargain and Sale Deed

After Recording Return To:
RECP/UP Kenmore, LP
c/o Urban Partners, LLC
304 S. Broadway, Suite 400
Los Angeles, California 90013
Attn: Matthew N. Burton

BARGAIN AND SALE DEED

GRANTOR: CITY OF KENMORE, a Washington municipal corporation

GRANTEE: RECP/UP KENMORE, LP, a Delaware limited partnership

Legal Description:

Abbreviated Form: _____,

Additional legal on Exhibit A to document

Assessor's Tax Parcel ID#: _____

THE GRANTOR, CITY OF KENMORE, a Washington municipal corporation ("City" or "Grantor"), for and in consideration of the development of the following described property pursuant to the provisions of that certain Disposition and Development Agreement dated June __, 2007 by and between Grantor and Grantee (the "Development Agreement"), Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, bargains, sells and conveys to RECP/UP KENMORE, LP, a Delaware limited partnership ("Developer" or "Grantee"), the following described real estate, situated in the County of King, State of Washington:

See Exhibit A attached hereto and by the reference incorporated herein (the "Property").

Subject to and excepting those matters listed in Exhibit B attached hereto and incorporated herein by this reference (the "Permitted Exceptions").

Grantee has conducted a thorough investigation of the Property and is in all respects knowledgeable and familiar with the present condition and state of repair of the Property. GRANTEE IS PURCHASING THE PROPERTY IN AN "AS-IS CONDITION AND STATE OF REPAIR, AND WITH ALL FAULTS" BASIS, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR STATUTORY. GRANTOR MAKES NO REPRESENTATIONS OR

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WARRANTIES WHATSOEVER WITH RESPECT TO THE PHYSICAL CONDITION OR VALUE OF THE PROPERTY, THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES ON THE PROPERTY, SOILS CONDITIONS OR OTHER PHYSICAL CHARACTERISTICS OF THE PROPERTY OR THE SUITABILITY OF THE PROPERTY FOR GRANTEE'S INTENDED DEVELOPMENT. GRANTOR MAKES NO REPRESENTATION WHATSOEVER REGARDING THE FINANCIAL FEASIBILITY OF THE PROPOSED REDEVELOPMENT OF THE PROPERTY. GRANTEE DOES HEREBY WAIVE AND RELEASE GRANTOR, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS FROM ANY AND ALL CLAIMS FOR DAMAGES, LOSSES, LIABILITIES, COSTS AND EXPENSES WHATSOEVER, (INCLUDING, WITHOUT LIMITATION REASONABLE ATTORNEY'S FEES AND COSTS), WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, WHICH MAY ARISE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY OR ANY REQUIREMENTS OF LAW APPLICABLE THERETO.

The term "Hazardous Substances" means any hazardous substance, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes, without limitation, petroleum oil and any of its fractions.

The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act, the Toxics Substance Control Act, the Model Toxics Control Act and any similar or comparable federal, state or local law.

The term "Requirements of Laws" means all requirements relating to land and building construction including, without limitation, planning, zoning, building, subdivision, health, Environmental, air quality, flood hazard, fire safety, accessibility and other governmental approvals, permits, licenses and/or certificates as may be necessary from time to time to comply with all applicable statutes, rules, orders, regulations, laws, ordinances and covenants, conditions and restrictions which apply to and/or affect the design, construction, existence, intended use, operation and or occupancy of the Property.

By acceptance of this Deed, Grantee does hereby accept and agree to all of the terms hereof.

Dated _____, 200__.

GRANTOR:

CITY OF KENMORE,
a Washington municipal corporation

By _____
Name _____
Its _____

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ACCEPTED AND AGREED this ____ day of _____, 200__.

GRANTEE:

RECP/UP KENMORE, LP, a Delaware

limited partnership

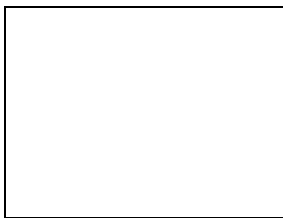
By: Urban RECP Portfolio GP, LLC,
a Delaware limited liability company,
Its General Partner

By: _____
Matthew N. Burton, Vice President

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the City of Kenmore, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____.



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

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STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that Matthew N. Burton 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 Vice President of Urban RECP Portfolio GP, LLC, the general partner of RECP/UP KENMORE, LP, a Delaware limited partnership, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

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EXHIBIT A

Certain real property located in the City of Kenmore, King County, Washington and more particularly described as follows:

[INSERT LEGAL DESCRIPTION]

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EXHIBIT B

Permitted Exceptions

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EXHIBIT G
Affordable Housing Covenant

[To be finalized by December 31, 2007]

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EXHIBIT H
Certificate of Completion

After Recording Return To:

RECP/UP Kenmore, LP
The Bradbury Building
304 S. Broadway, Suite 400
Los Angeles, California 90013
Attn: Matthew N. Burton

CERTIFICATE OF COMPLETION

GRANTOR: CITY OF KENMORE, a Washington municipal corporation

GRANTEE: RECP/UP KENMORE, LP, a Delaware limited partnership

Legal Description:

Abbreviated Form: _____

(Additional legal on Exhibit A)

Assessor's Tax Parcel No(s). _____

Related Document: Bargain and Sale Deed, Recording No. _____

The CITY OF KENMORE, a Washington municipal corporation ("City"), certifies that RECP/UP KENMORE, LP, a Delaware limited partnership ("Developer"), has satisfactorily completed construction of that portion of the Downtown Site Property located on the real property legally described on Exhibit A attached hereto (the "Property"), as described in that certain Disposition and Development Agreement dated June __, 2007 (the "Development Agreement"), a memorandum of which was recorded _____, 2007 in the Official Records of King County, Washington under Recording No. _____. The Property was conveyed by City to Developer pursuant to a Bargain and Sale Deed dated _____, 200_, and recorded on _____, 200_ in the Official Records of King County, Washington under Recording No. _____ (the "Deed.").

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

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

Dated _____, 200_

CITY OF KENMORE,
a Washington municipal corporation

By: _____
Name: _____
Its: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of the CITY OF KENMORE, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____.



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

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EXHIBIT A
Legal Description of Property

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EXHIBIT I
Memorandum of Disposition and Development Agreement

After Recording Return To:

RECP/UP Kenmore, LP
c/o Urban Partners, LLC
304 S. Broadway, Suite 400
Los Angeles, California 90013
Attn: Matthew N. Burton

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

GRANTOR: CITY OF KENMORE, a Washington municipal corporation

GRANTEE: RECP/UP KENMORE, LP, a Delaware limited partnership

Legal Description:

Abbreviated Form: _____

Additional legal on Exhibit A to document

Assessor's Tax Parcel ID No(s). _____

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MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT ("Memorandum") is entered into as of _____, 2007 by and between the CITY OF KENMORE, a Washington municipal corporation ("City"), and RECP/UP KENMORE, LP, a Delaware limited partnership ("Developer").

RECITALS

City and Developer entered into that certain Disposition and Development Agreement dated as of June __, 2007, (the "Development Agreement") whereby the City agreed to transfer, and Developer agreed to purchase, certain real property legally described in Exhibit A attached hereto and by this reference incorporated herein (the "Property") on the terms, covenants, conditions and limitations set forth in the Development Agreement.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. City agrees to transfer, and Developer agrees to purchase, the Property for the purchase price and on the terms and conditions set forth in the Development Agreement. Developer further agrees to design, develop, permit, finance and construct the Downtown Site Project on the Property within the time frames and upon all of the terms, covenants, conditions and limitations contained in the Development Agreement, which Development Agreement is incorporated herein by this reference. All capitalized terms not otherwise defined herein shall have the same meaning given such terms in the Development Agreement.

2. This Memorandum is not intended to change any of the terms of the Development Agreement and, in the event of any inconsistency between the terms of this Memorandum and the terms of the Development Agreement, the terms of the Development Agreement shall prevail.

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DEVELOPER:

RECP/UP KENMORE, LP
a Delaware limited partnership

CITY:

CITY OF KENMORE,
a Washington municipal corporation

By: Urban RECP Portfolio GP, LLC,
a Delaware limited liability company,
its General Partner

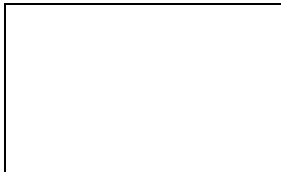
By: _____
Name: _____
Its: _____

By: _____
Matthew N. Burton, Vice President

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that Matthew N. Burton 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 Vice President of Urban RECP Portfolio GP, LLC, the general partner of RECP/UP KENMORE, LP, a Delaware limited partnership, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the CITY OF KENMORE to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

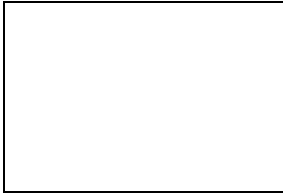
Dated: _____.

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(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

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EXHIBIT A

Certain real property located in the City of Kenmore, King County, Washington and more particularly described as follows:

[INSERT LEGAL DESCRIPTION]

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EXHIBIT J
City Mortgage

DEED OF TRUST, SECURITY AGREEMENT
AND FIXTURE FILING

THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made as of the ____ day of [date], by RECP/UP KENMORE, LP, a Delaware limited partnership, as grantor and debtor ("Grantor"), whose address is The Bradbury Building, 304 S. Broadway, Suite 400, Los Angeles, California 90013, to WASHINGTON ADMINISTRATIVE SERVICES, INC., as trustee ("Trustee"), whose address is 925 Fourth Avenue, Suite 2900, Seattle, Washington 98104, for the benefit of CITY OF KENMORE, a Washington municipal corporation ("City" or "Beneficiary"), whose address is 6700 N.E. 181st Street, P.O. Box 82607, Kenmore, Washington 98028-0607, Attn: Stephen Anderson, City Manager.

W I T N E S S E T H

GRANTOR HEREBY IRREVOCABLY GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS AND ASSIGNS:

A. To Trustee, in trust, with power of sale and right of entry and possession, all of its present and future estate, right, title and interest in and to that certain real property located in the County of King, State of Washington, as more particularly described in Exhibit A attached hereto and made a part hereof, including all easements and rights used in connection therewith or as a means of access thereto, together with all right, title and interest that Grantor now has or may hereafter acquire in:

1. All income, rents, royalties, revenue, issues, profits and proceeds from any and all of such real property, subject, however, to the right, power and authority hereinafter conferred upon Beneficiary or reserved to Grantor to collect and apply such income, rents, royalties, revenue, issues, profits and proceeds.

2. All deposits or other security or advance payments, including rental payments, made by or on behalf of Grantor to others with respect to (i) utility service for all or any part of said property or any improvements thereon, (ii) insurance policies relating to said property or any improvements thereon, and all claims or demands relating to insurance, (iii) cleaning, maintenance, repair or similar services for said property or any part thereof or any improvements thereon, and (iv) rental of equipment used in the operation of any part of said property or any improvements thereon.

3. All fixtures now or hereafter affixed to such real property, including all buildings, structures and improvements of every kind and description now or hereafter erected or

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placed thereon, and any and all machinery, motors, elevators, skybridges, boilers, equipment (including, without limitation, all equipment for the generation or distribution of air, water, heat, electricity, light, fuel or refrigeration or for ventilating or air-conditioning purposes or for sanitary or drainage purposes or for the removal of dust, refuse or garbage), partitions, building service equipment, building materials, supplies, electronic audio/visual equipment, computers, software, awnings, carpeting and other floor coverings, lobby furnishings, conduit, wiring, cabling, plumbing, sprinklers and sprinkler equipment, safety systems and equipment, alarms, control devices, security systems, intercoms, any and all trees, plants, shrubs and other landscaping, trash compactors, garbage dumpsters, incinerators and other property of every kind and description now or hereafter placed, attached, affixed or installed in such buildings, structures or improvements, and all replacements, repairs, additions, accessions or substitutions or proceeds thereto or therefor; all of such fixtures, whether now or hereafter placed thereon, being hereby declared to be real property and referred to hereinafter as the "Improvements."

4. All damages, royalties and revenue of every kind, nature and description whatsoever that Grantor may be entitled to receive from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of such real property, with the right in Beneficiary to receive and receipt therefor and apply the same to the indebtedness secured hereby either before or after any default hereunder, and Beneficiary may demand, sue for and recover any such payments but shall not be required so to do.

5. All proceeds and claims arising on account of any damage to or taking of any part thereof, and all causes of action and recoveries for any loss or diminution in the value of such real property or the Improvements.

6. All licenses (including but not limited to any operating licenses or similar matters) contracts, management contracts or agreements, franchise agreements, permits, authorizations or certificates required or used in connection with the ownership of, or the operation or maintenance of, the Improvements.

7. All governmental permits relating to construction, all names under or by which the Improvements or other real property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof.

8. All of Grantor's rights further to encumber said property for debt.

All of the property conveyed or intended to be conveyed to Trustee in Paragraph A. above is hereinafter referred to as the "Real Property."

B. To Beneficiary, as secured party, a security interest in any portion of the Real Property owned by Grantor which may be construed to be personal property and in all other personal property of every kind and description, whether now existing or hereafter acquired and owned by Grantor, now or at any time hereafter attached to, erected upon, situated in or upon, forming a part of or appurtenant to and which is used or useful in the construction or operation of or in connection with, or arising from the use or enjoyment of all or any portion of, or from any lease or agreement pertaining to, the Real Property, including:

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1. All water rights appurtenant to the Real Property, all water permits and applications together with all pumping and distribution equipment, plants, pipes and flumes, all shares of stock or other evidence of ownership of any part of the Real Property that is owned by Grantor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Real Property.

2. All plans and specifications prepared for construction of the Improvements and all studies, data and drawings related thereto; and also all contracts and agreements of Grantor relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings, or to the construction of Improvements.

3. All equipment, machinery, fixtures, security and other access devices, plants, decorations, art of any medium, tools, cleaning supplies and equipment, and telephone systems, accounts, investment property, as defined in the Washington Uniform Commercial Code, general intangibles, documents, instruments and chattel paper, and all other personal property of every kind and description.

4. All records and data related to any property herein described, whether in the form of a writing, photographs, microfilm, microfiche, or electronic media, together with all of Grantor's right, title and interest in and to all computer software required to utilize, create, maintain and process any such records or data or electronic media.

5. All substitutions, accessions, additions and replacements to any of the foregoing.

6. All proceeds of any of the foregoing property, including, without limitation, proceeds of any voluntary or involuntary disposition or claim respecting any such property (pursuant to judgment, condemnation award or otherwise) and all goods, documents, general intangibles, chattel paper and accounts, wherever located, acquired with cash proceeds of any of the foregoing or proceeds thereof.

All of the property assigned or transferred or intended to be assigned or transferred to Beneficiary in Paragraph B. above is hereinafter referred to as the "Personal Property."

All of the Real Property and the Personal Property is referred to herein collectively as the "Property."

TO HAVE AND TO HOLD said Property bargained and described, together with all and singular the lands, tenements, privileges, water rights, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all of the estate, right, title, claim and demands whatsoever of Grantor, either in law or in equity, of, in and to the above-bargained Property forever, as security for the faithful performance of the obligations of Grantor under the Disposition and Development Agreement (defined below) secured hereby and as security for the faithful performance of each and all of the covenants, agreements, terms and conditions of this

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Deed of Trust,

FOR THE PURPOSE OF SECURING:

ONE: Performance of each agreement of Grantor herein contained or contained in any other agreement given by Grantor to Beneficiary, including, without limitation, that certain Disposition and Development Agreement dated July 9, 2007 (the "Disposition and Development Agreement") executed by Grantor and Beneficiary.

TWO: Payment of all other moneys herein or in the Disposition and Development Agreement agreed or provided to be paid by Grantor and such further sums as may be advanced or loaned by Beneficiary to Grantor pursuant to the terms hereof.

GRANTOR REPRESENTS, ALLEGES, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I
COVENANTS

1.01. Performance of Disposition and Development Agreement and Deed of Trust.

Grantor will perform and comply with each and every term, covenant and condition hereof, and of the Disposition and Development Agreement. All capitalized terms not otherwise defined herein shall have the definition set forth in the Disposition and Development Agreement. In the event of any conflict between the terms of this Deed of Trust and the Disposition and Development Agreement, the terms and conditions of the Disposition and Development Agreement shall control.

1.02. Warranty of Title.

Grantor represents and warrants that at the time of the delivery of this Deed of Trust, (i) Grantor is lawfully possessed and is the owner in fee simple of the Property; (ii) the Property is free and clear of any deed of trust, mortgage, lien, charge or encumbrance thereon or affecting the title thereto prior to this Deed of Trust, and none will be created by Grantor during the term of this Deed of Trust except upon such terms and conditions as contemplated under the Disposition and Development Agreement; (iii) Grantor has good right to make this Deed of Trust; (iv) Grantor has good and absolute title to all existing Personal Property, and has good right, full power and lawful authority to convey and encumber the same in the manner and form conveyed and encumbered hereby; that the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the Personal Property and fixtures, security agreements, conditional sales contracts and anything of a similar nature and none superior to this Deed of Trust will be created or suffered to be created by Grantor; (v) there is no financing statement covering the Property, or any part thereof, on file in any public office; (vi) Grantor will warrant and forever defend the title to the Property against the claims of all persons whomsoever; and (vii) there is no action, litigation or proceeding pending or threatened against Grantor or the Property.

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1.03. Subordination.

Notwithstanding anything in this Deed of Trust to the contrary, if requested by Construction Lender (as defined in the Disposition and Development Agreement) Beneficiary will subordinate this Deed of Trust to the Construction Mortgage (as defined in the Disposition and Development Agreement) in favor of the Construction Lender under the terms and conditions set forth in Section 4.6 of the Disposition and Development Agreement.

1.04. Taxes, Liens and Other Charges.

Grantor will pay when due:

(a) All taxes, assessments and other governmental or public charges affecting the Property, and any accrued interest, cost and/or penalty thereon and upon request by Beneficiary will submit receipts therefor to Beneficiary promptly following payment;

(b) All encumbrances (including any debt secured by deeds of trust), ground rents, liens and/or charges, with interest, on the Property or any part thereof which appear to be prior, superior or on a parity hereto, and all costs and fees related thereto;

(c) All charges for utilities or services, including, but not limited to, electricity, gas, sewer and water;

(d) All Trustee's fees and attorneys' fees in connection with sale pursuant to Paragraph 2.01 (whether completed or not) together with interest from and after ten (10) days following demand for repayment at an interest rate equal to twelve percent (12%) per annum until paid in full, and

(e) Grantor may, in good faith, contest, by proper legal proceedings, and at its own expense, the validity or amount of any such tax, assessment or governmental charge. Beneficiary may upon reasonable notice to Grantor pay such contested item or items out of any sums so deposited in case of undue delay in the prosecution of such proceedings, or if the protection of the Property or of Beneficiary's interest therein shall, in the reasonable judgment of Beneficiary, require such payment.

1.05. [Intentionally Deleted].

1.06. Insurance.

(a) Grantor will at all times provide, maintain and keep in force or cause to be provided, maintained or kept in force:

(i) Builder's risk insurance insuring against loss or damage from such causes of loss as are embraced by insurance policies of the type now known as "Builder's Risk" property insurance (written on an "all risk" or "open perils" basis), including, without limitation, fire and extended coverage, collapse of the improvements and earthquake coverage to agreed limits, all in form and substance acceptable to Beneficiary and (i) as to property then subject to

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Restoration (as defined in Section 1.07(b)) or any restoration accomplished in connection with a Condemnation, in an amount not less than the full replacement cost of such property, and (ii) as to any improvements then being constructed, in an amount not less than the completed value on a non reporting form, of the additional improvements then being constructed; provided, however, that such insurance shall be required only during any period of Restoration or any restoration accomplished in connection with a Condemnation, or any period of construction of any improvements;

(ii) Policies of insurance insuring the Property against loss or damage by fire and lightning; against loss or damage by other risks embraced by coverage of the type now known as the broad form of extended coverage, including, but not limited to, riot and civil commotion, vandalism and malicious mischief; and against such other risks or hazards as Beneficiary from time to time reasonably may designate in an amount sufficient to prevent Beneficiary or Grantor from becoming a co-insurer under the terms of the applicable policies, but in any event in an amount not less than 100% of the then full replacement cost of the Improvements (exclusive of the cost of excavations, foundations and footings below the lowest basement floor) and Personal Property without deduction for physical depreciation;

(iii) Flood insurance upon the Property in the event that such insurance is available pursuant to the provisions of the Flood Disaster Protection Act of 1973 or other applicable legislation (Beneficiary reserves the right to require that Grantor secure flood insurance in excess of the amount provided by the Flood Disaster Protection Act of 1973 if such insurance is commercially available at a reasonable premium up to the amount provided in Paragraph 1.06(a)(i) hereof);

(iv) Commercial general liability insurance, automobile liability and workers' compensation insurance as required under the terms of the Disposition and Development Agreement.

(b) All policies of insurance required under this Paragraph 1.06 shall be issued by companies approved by Beneficiary and shall satisfy the requirements set forth in the Disposition and Development Agreement. All property and flood insurance policies shall contain a Noncontributory Standard Mortgagee Clause and the Lender's Loss Payable Endorsement (Form 438 BFU NS), or their equivalents, in favor of Beneficiary, and shall provide that the proceeds thereof shall be payable to Beneficiary. Beneficiary shall be furnished with the original of each policy or certificates thereof required to be provided by Grantor hereunder, which policy shall provide that it shall not be modified or cancelled without thirty (30) days' (ten (10) days' for non-payment of premium) prior written notice to Beneficiary. At least thirty (30) days prior to expiration of any policy required to be provided by Grantor hereunder, Grantor shall furnish Beneficiary appropriate proof of issuance of a policy continuing in force the insurance so expiring. Grantor shall furnish Beneficiary receipts for the payment of premiums on such insurance policies or other evidence of such payment reasonably satisfactory to Beneficiary. In the event that Grantor does not deposit with Beneficiary a new policy of insurance with evidence of payment of premium thereon at least thirty (30) days prior to the expiration of any expiring policy, then Beneficiary may, but shall not be obligated to, procure such insurance and pay the premiums therefor and Grantor agrees to repay to Beneficiary the

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premiums thereon promptly on demand, together with interest thereon at an interest rate equal to twelve percent (12%) per annum until paid in full.

(c) In the event of any loss or damage to the Property, all proceeds of insurance (the "Insurance Proceeds") shall be payable to Construction Lender or, if at the time of any such loss or damage there is no Construction Lender, to Beneficiary, and Grantor hereby authorizes and directs any affected insurance company to make payment of the Insurance Proceeds directly to Construction Lender or, if at the time of any such loss or damage there is no Construction Lender, to Beneficiary. The application or release by Beneficiary of any Insurance Proceeds shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(d) In the event of the foreclosure of this Deed of Trust or other transfer of the title to the Property in extinguishment, in whole or in part, of the indebtedness secured hereby, all right, title and interest of Grantor in and to any insurance policy, or premiums or payments in satisfaction of claims or any other rights thereunder then in force, shall pass to the purchaser or grantee notwithstanding the amount of any bid at such foreclosure sale.

1.07. Restoration.

(a) After the happening of any casualty to the Property whether or not required to be insured against under the policies to be provided by Grantor hereunder, Grantor shall give prompt written notice thereof to Beneficiary generally describing the nature and cause of such casualty and the extent of the damage or destruction to the Property.

(b) Grantor hereby assigns to Beneficiary all Insurance Proceeds which Grantor may be entitled to receive. In the event of any damage to or destruction of the Improvements, Grantor shall commence and diligently pursue to completion in accordance with this Section 1.07 the repair, restoration and rebuilding of any portion of the Property that has been partially damaged or destroyed in full compliance with the requirements set forth in the Disposition and Development Agreement and in full compliance with all legal requirements and to the same condition, character and at least equal value and general utility as nearly as possible to that existing prior to such damage or destruction (the "Restoration"). In the event there is a Construction Lender at the time of such loss or damage, Construction Lender shall hold and disburse the Insurance Proceeds to reimburse the Grantor for the costs of the Restoration in accordance with the provisions of the Construction Mortgage. In the event there is no Construction Lender at the time of such loss or damage, the Insurance Proceeds shall be payable to Beneficiary who shall hold and disburse the Insurance Proceeds (less the cost, if any, to Beneficiary of recovering and paying out such proceeds (including, without limitation, attorneys' fees and expenses, adjuster's fees, and fees incurred in Beneficiary's performance of its obligations hereunder)) (the "Net Insurance Proceeds") in the manner hereinafter provided to the Restoration. The Net Insurance Proceeds shall be deposited by Beneficiary in a segregated account and used to reimburse Grantor for the costs of the Restoration.

(c) Prior to disbursement of any Net Insurance Proceeds for any work in connection with the Restoration (the "Work"), Grantor shall deliver or furnish to Beneficiary

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(i) complete plans and specifications for the Work which (A) have been approved by all governmental authorities whose approval is required, (B) bear the signed approval of an architect satisfactory to Beneficiary (the "Architect") and (C) are accompanied by Architect's signed estimate of the total estimated cost of the Restoration. Such plans and specifications shall be subject to Beneficiary's approval, which approval shall not be unreasonably withheld (the "Approved Plans and Specifications"); (ii) the amount of money which, as determined by Beneficiary, will be sufficient when added to the Net Insurance Proceeds, if any, to pay the entire cost of the Restoration (all money as held by Beneficiary is referred to herein as the "Restoration Funds"); (iii) copies of all permits and approvals required by law in connection with the commencement and conduct of the Restoration; and (iv) a contract for construction executed by Grantor and a contractor satisfactory to Beneficiary (the "Contractor") in form, scope and substance satisfactory to Beneficiary (including the customary retention) for performance of the Work.

(d) After commencing the Work, Grantor shall perform or cause Contractor to perform the Work diligently and in good faith in accordance with the Approved Plans and Specifications approved by Beneficiary. So long as Grantor is not in default under the Disposition and Development Agreement, Beneficiary shall disburse the Restoration Funds in increments to Grantor or as Grantor may direct, from time to time as the Work progresses, to pay (or reimburse Grantor for) the costs of the Restoration, but subject to the following conditions, any of which Beneficiary may waive in its sole discretion:

(i) Beneficiary shall make such payments only upon not less than ten (10) days' prior written notice from Grantor to Beneficiary and Grantor's delivery to Beneficiary of (A) Grantor's written request for payment (a "Request for Payment") accompanied by a certificate by Architect in form, scope and substance satisfactory to Beneficiary which states that all of the Work completed to that date has been done in compliance with the Approved Plans and Specifications and in accordance with all provisions of law, that the amount requested has been paid or is then due and payable and is properly a part of the cost of the Restoration and that when added to all sums, if any, previously paid out by Beneficiary, the requested amount does not exceed the value of the Work done to the date of such certificate; (B) evidence satisfactory to Beneficiary that there are no construction or similar liens for labor or material supplied in connection with the Work to date or that any such liens have been adequately provided for to Beneficiary's satisfaction; and (C) evidence satisfactory to Beneficiary that the balance of the Restoration Funds remaining after making the payments shall be sufficient to pay the balance of the cost of the Restoration not completed to date (giving in such reasonable detail as Beneficiary may require an estimate of the cost of such completion). Each Request for Payment shall be accompanied by waivers of liens satisfactory to Beneficiary covering that part of the Work previously paid for, if any, and by a search prepared by a title company or by other evidence satisfactory to Beneficiary that no construction liens or other liens or instruments for the retention of title in respect of any part of the Work have been filed against the Property and not discharged of record and that no encumbrance exists on or affecting the Property other than encumbrances, if any, which are set forth in the title policy issued to Beneficiary insuring the lien of this Deed of Trust; and

(ii) Any Request for Payment after the Restoration has been completed

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shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the Improvements legal.

(e) Upon Beneficiary's receipt of the certificate of occupancy for the Improvements and other customary evidence requested by Beneficiary that the Restoration has been completed and the costs thereof paid in full, and satisfactory evidence that no mechanic's or similar liens for labor or material supplied in connection with the Restoration are outstanding against the Property and Beneficiary's disbursement under the final Request for Payment. Beneficiary shall pay any remaining Restoration Funds then held by Beneficiary to Grantor.

1.08. Condemnation.

Should the Property or any part thereof be taken or damaged by reason of any public improvement, condemnation proceeding, or conveyance in lieu thereof, or in any other manner, Grantor shall be entitled to all compensation, awards and other payments or relief therefor. Grantor shall have the right, with the prior written consent of the Beneficiary, to make a compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds (the "Condemnation Proceeds") are hereby assigned to Beneficiary, who shall, after deducting therefrom all its reasonable expenses, including attorneys' fees, apply or release the Condemnation Proceeds with the same effect as provided in Paragraph 1.07 above with respect to disposition of insurance proceeds; provided, that if such Condemnation Proceeds are to be utilized for restoration of the Property and there are any excess Condemnation Proceeds after application thereof to the restoration of the Property, Grantor shall be entitled to such excess. Grantor agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary may require.

1.09. Care of the Property.

Grantor will:

(a) Keep the Property in good condition and repair and not commit or permit any waste or deterioration of the Property except as approved in writing by Beneficiary pursuant to the terms of the Disposition and Development Agreement;

(b) Not remove, demolish or substantially alter any portion of the Property, except as approved in writing by Beneficiary pursuant to the terms of the Disposition and Development Agreement and except such alterations as may be required by laws, ordinances or regulations of governmental authorities;

(c) Comply with all laws, ordinances, rules, regulations and orders of governmental authorities now or hereafter affecting the Property or requiring any alterations or improvements to be made thereon, and perform all of its obligations under any covenant, condition, restriction or agreement of record affecting the Property;

(d) Complete promptly and in good and workmanlike manner any portion of the Property which may be constructed hereafter, and promptly restore in like manner as obligated in Paragraph 1.07, any portion of the Property which may be damaged or destroyed,

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and pay, when due, all costs incurred and claims for labor performed and materials furnished therefor;

(e) Not commit, suffer or permit any act to be done in, upon or to the Property in violation of any law or ordinance or any covenant, condition or restriction affecting the Property;

(f) Do any and all acts which, from the character or use of the Property, may be reasonably necessary to protect and preserve the security of Beneficiary, the specific enumerations herein not excluding the general;

(g) Not permit any construction liens against the Property;

(h) Not take or permit to be taken any actions that might invalidate any insurance carried on the Property.

1.10. [Intentionally Deleted].

1.11. Other Agreements Affecting the Property.

(a) Grantor shall have the right to file or record a condominium declaration against the Real Property in accordance with the provisions of the Disposition and Development Agreement.

(b) Save and except for taxes and assessments provided to be paid by Grantor as specified in Paragraph 1.04 hereof and the Construction Mortgage as authorized under the terms of the Disposition and Development Agreement, Grantor will not create or suffer or permit to be created, subsequent to the date of the execution and delivery of this Deed of Trust, any lien or encumbrance affecting the Real Property except such as have been disclosed to and approved by Beneficiary in writing upon such terms and conditions as may be satisfactory to Beneficiary.

1.12. Expenses.

(a) Grantor shall pay all attorneys' fees, costs and expenses, including expenses of retaking, holding, preparing for sale or selling (including cost of evidence or search of title) in connection with any action or actions which may be brought for the foreclosure of this Deed of Trust and/or for possession of the Property and/or for the protection of or the defense of the priority of the lien provided for by this Deed of Trust and/or for the appointment of a receiver and/or for the enforcement of any and all covenants or rights contained in or secured by this Deed of Trust and/or any case or proceeding under Chapters 7, 11, or 13 of the Bankruptcy Code or any successor statute thereto.

(b) Grantor will pay immediately following demand all sums expended or expenses incurred by Trustee and/or Beneficiary, including, without limitation, attorneys' fees, under any of the terms of this Deed of Trust, with interest from date of expenditure at an interest rate equal to twelve percent (12%) per annum until paid in full.

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1.13. Inspection of Property.

Beneficiary is authorized, by itself, its agents, employees or workmen, to enter at any reasonable time upon any part of the Property for the purpose of inspecting the same upon reasonable prior notice (except in the case of an emergency for which no prior notice need be given), and for the purpose of performing any of the acts it is authorized to perform under the terms of this Deed of Trust. Grantor agrees to cooperate with Beneficiary to facilitate such inspections.

1.14. Performance by Grantor.

Grantor will faithfully perform each and every covenant to be performed by Grantor under any lien or encumbrance, including, without limiting the generality hereof, mortgages, deeds of trust, leases, declarations or covenants, conditions and/or restrictions and other agreements which affect the Property, in law or in equity, which Beneficiary reasonably believes may be prior or superior to or on a parity with the lien or charge of this Deed of Trust. Grantor shall not, without first obtaining Beneficiary's prior written consent, change the general nature of the occupancy or initiate or acquiesce in any zoning reclassification or suffer any act or thing which would impair the security for Grantor's performance of its obligations under the Disposition and Development Agreement or Beneficiary's lien upon the Property. A breach of or a default under any such lien or encumbrance, or a breach of any requirement of this Paragraph 1.14, shall constitute an event of default under this Deed of Trust.

1.15. Suits to Protect Property.

Grantor covenants and agrees to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust, and/or any additional or other security for the obligations secured hereby, the interest of Beneficiary or the rights, powers and/or duties of Trustee hereunder; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any action or proceeding in which Beneficiary and/or Trustee may appear or be made a party, including, but not limited to, foreclosure or other proceeding commenced by those claiming a right to any part of the Property under subordinate liens, in any action to partition or condemn all or part of the Property, whether or not pursued to final judgment, and in any exercise of the power of sale contained herein, whether or not the sale is actually consummated.

1.16. Beneficiary's Right to Defend Action and Cure Certain Defaults.

Beneficiary may appear in and defend any action or proceeding at law or in equity or in bankruptcy purporting to affect the Property or the security hereof, and in such event (except where the purported defect affecting the security hereof arises or results from any act or omission of Beneficiary), Beneficiary shall be allowed and paid all Beneficiary's costs, charges and expenses, including cost of evidence of title and attorneys' fees incurred in such action or proceeding in which Beneficiary may appear.

Should Grantor fail to make any payment or to do any act as herein provided, then

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Beneficiary or Trustee, but without obligation so to do and upon reasonable prior notice to or demand upon Grantor (except for monetary defaults or defaults in the payment of taxes or insurance for which no prior written notice or demand shall be required) and without releasing Grantor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Real Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such power, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, employment of an attorney, and payment of said attorney's reasonable fees.

Grantor hereby agrees to pay immediately following demand, together with interest from and after ten (10) days following demand for payment at an interest rate equal to twelve percent (12%) per annum until paid in full, all of Beneficiary's costs, charges, expenses and accounts referred to above in this Paragraph 1.16, including cost of evidence of title and reasonable attorneys' fees incurred in such action or proceeding in which Beneficiary may appear. All costs, charges and expenses so incurred, together with interest thereon as aforesaid, shall be secured by the lien of this Deed of Trust.

ARTICLE II DEFAULTS AND REMEDIES

2.01. Events of Default.

Upon the occurrence of any Event of Default as defined in Section 21.1 of the Disposition and Development Agreement which is not cured within the period of time, if any, provided for cure therein, and provided there is no default by Beneficiary under the Disposition and Development Agreement,

Beneficiary shall be entitled to exercise all rights, and shall have the benefit of all remedies provided by law or set forth in this Deed of Trust or in the Disposition and Development Agreement. No waiver of Beneficiary of any default on the part of Grantor shall be construed as a waiver of any subsequent default hereunder.

In the event of any such Event of Default and upon written request of Beneficiary, Trustee shall sell the Property in accordance with the Deed of Trust Act of the state of Washington (RCW Chapter 61.24 as existing now or hereafter amended) and the Uniform Commercial Code of the state of Washington, where applicable, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Grantor agrees that Beneficiary may credit bid at Trustee's sale an amount which in the reasonable exercise of Beneficiary's judgment, Beneficiary would be required to expend in order to obtain payment and performance of Grantor's remaining obligations under the Disposition and Development Agreement as of the date an Event of Default occurs. Trustee shall apply the proceeds of the sale as follows: (i) to the expenses of sale, including a reasonable Trustee's fee and attorney's fee; (ii) to the payment

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and performance of the obligations set forth in the Disposition and Development Agreement and all other indebtedness secured by this Deed of Trust or any other instrument; (iii) the surplus, if any, shall be distributed in accordance with said Deed of Trust Act. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the property which Grantor had or had the power to convey at the time of its execution of this Deed of Trust and such as it may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of the law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the state of Washington is not an exclusive remedy, and when not exercised Beneficiary may foreclose this Deed of Trust as a mortgage.

Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party, unless such action or proceeding is brought by Trustee.

Beneficiary may proceed as to the Personal Property in accordance with Beneficiary's rights and remedies in respect to the Property or sell the Personal Property separately and without regard to the remainder of the Property in accordance with Beneficiary's rights and remedies provided by the Washington Uniform Commercial Code as well as other rights and remedies available at law or in equity.

2.02. Discontinuance of Proceedings.

Beneficiary, from time to time before the Trustee's sale pursuant to Paragraph 2.01, may rescind any notice of default or notice of sale by executing and delivering to Trustee a written notice of discontinuance of Trustee's sale, which notice, when recorded, shall also constitute a cancellation of any prior notice of default and notice of sale. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other notices of default and notices of sale, nor otherwise affect any provision, covenant or condition of the Disposition and Development Agreement and/or of this Deed of Trust or any of the rights, obligations or remedies of the parties thereunder or hereunder.

2.03. Beneficiary Statement.

Trustee, upon presentation to it of an affidavit signed by or on behalf of Beneficiary setting forth any fact or facts showing a default by Grantor under any of the terms or conditions of this Deed of Trust, is authorized to accept as true and conclusive all facts and statements in such affidavit and to act hereunder in complete reliance thereon. Upon written request by Grantor, Beneficiary will confirm the status of Grantor's performance under the Disposition and Development Agreement.

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2.04. Remedies Upon Default.

Grantor covenants and agrees that, should Grantor fail or refuse to make any payment or do any act which it is obligated hereunder to make or do at the time and in the manner herein provided, then Beneficiary, or Trustee upon written instructions from Beneficiary (the legality thereof to be determined solely by Beneficiary), may, without demand upon Grantor, without releasing Grantor from any obligation hereunder and without waiving its right to declare a default as herein provided, or impairing any declaration of default or election to cause the Property to be sold or any sale proceeding predicated thereon:

(a) Make or do the same in such manner and to such extent as either Beneficiary or Trustee may deem necessary to protect the security hereof, Beneficiary and Trustee being authorized to enter upon and take possession of the Property for such purposes, and any sums expended for such purposes shall be secured hereby;

(b) Commence, appear in and/or defend any action or proceedings purporting to affect the security hereof, and/or any additional or other security therefor, the interest, rights, powers and/or duties of Trustee and/or Beneficiary hereunder, whether brought by or against Grantor, Trustee or Beneficiary; and

(c) Pay, purchase, contest or compromise any claim, debt, lien, charge or encumbrance which, in the judgment of either, may affect or appear to affect the security of this Deed of Trust, the interest of Beneficiary or the rights, powers and/or duties of Trustee and/or Beneficiary hereunder, and any sums expended for such purposes shall be secured hereby.

Neither Trustee nor Beneficiary shall be under any obligation to make any of the payments or do any of the acts referred to in this Paragraph 2.04, and any of the actions referred to in this Paragraph 2.04 may be taken by Beneficiary after an Event of Default has occurred irrespective of whether any notice of default or notice of sale has been given hereunder and without regard to the adequacy of the security for the performance of Grantor's obligations under the Disposition and Development Agreement.

2.05. Foreclosure Sale.

In the event that this Deed of Trust is foreclosed as a mortgage and the Real Property sold at a foreclosure sale, the purchaser may, during the statutory redemption period, make such repairs or alterations on the Real Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid, together with interest thereon from the time of such expenditure at an interest rate equal to twelve percent (12%) per annum until paid, shall be added to and become a part of the amount required to be paid for redemption from such sale.

2.06. Sale of Property Pursuant to a Foreclosure.

In case of a sale pursuant to a foreclosure of this Deed of Trust, the Property, real, personal or mixed, may be sold as an entirety or in parcels, by one sale or by several sales held at one time or at different times, all as Trustee, in its unrestricted discretion, may elect, and

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Grantor, for and on behalf of itself and all persons claiming by, through or under Grantor, waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure sale and agrees that, upon foreclosure, the Property may be sold as an entirety and not in parcels.

ARTICLE III
GENERAL COVENANTS

3.01. No Waiver.

No failure by Beneficiary to insist upon strict performance of any term, covenant or condition hereof, nor failure to exercise any right or remedy hereunder, shall constitute a waiver of any such breach of such term, covenant or condition or of the later exercise of such right or remedy. All waivers shall be in writing.

3.02. Remedies Cumulative.

No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

3.03. Plats, Easements and Other Agreements.

At any time upon written request of Beneficiary, payment of its fees and presentation of this Deed of Trust, (in case of full reconveyance, for cancellation and retention) without affecting the liability of any person for the performance of Grantor's obligations under the Disposition and Development Agreement or the effect of the Deed of Trust upon the remainder of the Property, Trustee may (i) consent to the making of any map or plat of said Real Property; (ii) join in granting any easement or creating any restriction thereon; (iii) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof; or (iv) reconvey, without warranty, all or any part of the Real Property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto", and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Grantor agrees to pay a reasonable Trustee's fee for full or partial reconveyance, together with a recording fee, if Trustee, at its option, elects to record said reconveyance.

3.04. Recordation.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

3.05. Substitution of Trustee.

Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary and recorded in the county or counties where the Property is located, and by otherwise complying with appropriate statutory provisions, substitute a successor or successors

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for the trustee named herein or acting hereunder. Upon the recording of such appointment in the mortgage records of the county or counties in which the Property is situated, the successor trustee shall be vested with all the powers of the original trustee.

3.06. Notices.

(a) All notices hereunder shall be deemed to have been duly given if mailed by United States registered or certified mail, with return receipt requested, postage prepaid, to the parties at the following addresses (or at such other addresses as shall be given in writing by any party to the others), and shall be deemed complete upon receipt, refusal of delivery or attempted delivery:

To Beneficiary:	City of Kenmore 6700 NE 181st Street P.O. Box 82607 Kenmore, Washington 98028-0607 Attn: Stephen Anderson, City Manager
With a copy to:	Rod P. Kaseguma Inslee, Best, Doezie & Ryder, P.S. 777 108th Avenue NE, Suite 1900 Bellevue, WA 98009-9016
With a copy to	Heartland, LLC 524 Second Avenue, Suite 200 Seattle, WA 98104-2323 Attn: James S. Reinhardsen, Managing Director
To Grantor:	RECP/UP Kenmore, LP The Bradbury Building 304 S. Broadway, Suite 400 Los Angeles, California 90013 Attn: Dan Rosenfeld, Principal
With a copy to:	Thomas A. Barkewitz Alston, Courtmage & Bassetti LLP 1000 Second Avenue, Suite 3900 Seattle, Washington 98104-7600

(b) In the event of any strike or occurrence of another similar event which interrupts mail service, notices may be served personally upon an individual, partner or an officer or director of a corporation which is or is part of the party being served hereunder.

(c) Grantor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Grantor at the address set forth above.

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(d) Unless otherwise provided by applicable law, Trustee shall be under no obligation to notify any party hereto of any action or proceeding of any kind in which Grantor, Beneficiary and/or Trustee shall be a party, unless brought by Trustee, or of any pending sale under any other deed of trust.

3.07. Heirs and Assigns; Terminology.

(a) This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Grantor" shall mean both the original Grantor and any subsequent owner or owners of any of the Property. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(b) The term "and/or" as used herein means one or the other or both, or any one or all, or any combination of the things or persons in connection with which the words are used.

3.08. Severability.

If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Deed of Trust.

3.09. Time Is of the Essence.

Time is of the essence hereof in connection with all obligations of Grantor herein or in the Disposition and Development Agreement.

3.10. Captions.

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this Deed of Trust nor in any way affect this Deed of Trust.

3.11. Irrevocable Trust.

The Trust created hereby is irrevocable by Grantor unless and until the Property is reconveyed to Grantor as provided herein.

3.12. Conveyance of Property; Change of Ownership.

In the event that (i) all or any part of or any interest in the Property shall be sold, transferred, leased, further encumbered, conveyed, or a contract of sale or other conveyance entered into with respect thereto (except in strict compliance with the provisions of Section 23 of the Disposition and Development Agreement), or (ii) there is any transfer of interests in Grantor or any member or manager of Grantor (except in strict compliance with the provisions of the Disposition and Development Agreement), without the prior written consent of Beneficiary,

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then, Beneficiary may declare an Event of Default by Grantor under the Disposition and Development Agreement and this Deed of Trust.

3.13. Secondary Financing.

Grantor agrees that should the Property or any part thereof at any time be or become subject to the lien of any other mortgage or deed of trust or subject to any other encumbrance, pledge, hypothecation or security interest (except as authorized under the terms of the Disposition and Development Agreement or with the prior written consent of Beneficiary), Beneficiary may declare an Event of Default by Grantor under this Deed of Trust.

3.14. Effect of Security Agreement; Fixture Filing.

This Deed of Trust creates a lien on the Property, and to the extent the Property is not real property under applicable law this Deed of Trust constitutes a security agreement under the Washington Uniform Commercial Code and any other applicable law and is filed as a fixture filing. Grantor authorizes Beneficiary to file financing statements covering all personal property and fixtures described herein. If required by Beneficiary, at any time during the term of this Deed of Trust, Grantor will execute and deliver to Beneficiary, in form satisfactory to Beneficiary, additional security agreements, financing statements and/or other instruments covering all Personal Property or fixtures of Grantor which may at any time be furnished, placed on, or annexed or made appurtenant to the Real Property or used, useful or held for use, in the operation of the Improvements.

Beneficiary may commingle any Personal Property which comes into its possession; repledge such Personal Property upon terms which impair Grantor's right to redeem such; and require Grantor to assemble the Personal Property and make it available to Beneficiary at a place to be designated by Beneficiary which is reasonably convenient to both parties. To the extent Beneficiary is required for any reason to provide commercially reasonable notice to Grantor, Grantor agrees that notice mailed by first class mail ten (10) days before the event of which notice is given, is commercially reasonable notice. Grantor shall notify Beneficiary in writing within thirty (30) days of any change in name of Grantor or its legal structure or state of organization. Nothing herein shall be construed as a consent by Beneficiary to a change in legal structure or state of organization otherwise prohibited hereby.

Grantor hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Grantor, to execute, deliver and file with the appropriate filing officer or office such security agreements, financing statements or other instruments as Beneficiary may request or require in order to impose and perfect the lien and security interest hereof more specifically on the Personal Property or any fixtures.

If Grantor enters into a separate security agreement with Beneficiary relating to any of the Personal Property or fixtures, the terms of such security agreement shall govern the rights and remedies of Beneficiary in the event of default thereunder. Any breach of or default under any such security agreement shall constitute an Event of Default under this Deed of Trust.

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3.15. [Intentionally Deleted].

3.16. Non-Agricultural Use.

The Real Property which is the subject of this Deed of Trust is not used principally for agricultural purposes.

3.17. Commercial Purposes; Time of Essence.

The obligations evidenced by the Disposition and Development Agreement were incurred primarily for commercial, investment or business purposes and not for personal, family or household purposes. Time is of the essence hereof in connection with all obligations of Grantor herein or in the Disposition and Development Agreement.

3.18. Partial Release; Sale of Condominium Units.

Provided Grantor is not in default under any of the terms, covenants, conditions, warranties or representations hereunder or under any other document evidencing or securing the Disposition and Development Agreement, Beneficiary agrees to release from the lien of this Deed of Trust from time to time, one or more of the condominium units in any building (and the proportionate common area allocated to such units) that may hereafter be constructed on the Real Property (each a "Release Parcel"), upon the following terms and conditions and only upon satisfaction of the following terms and conditions:

(a) Grantor shall have otherwise complied with all requirements set forth in the Disposition and Development Agreement and Construction Mortgage and shall have secured the consent of all parties required under those agreements;

(b) Any Release Parcel must comply in all material respects with all applicable subdivision and Environmental Laws and ordinances and with the declaration of covenants, conditions and restrictions set forth in the recorded Condominium Declaration;

(c) The release of any Release Parcel must not result in the loss of reasonable access to a public street or the use of any necessary easements or utility services by any condominium unit not so released;

(d) If requested by Beneficiary, Grantor shall, at its sole cost and expense, deliver to Beneficiary an unmodified Washington 111 endorsement or other equivalent title endorsement(s) to Beneficiary's policy of title insurance insuring that the reconveyance of this Deed of Trust from the Release Parcel will not affect the continued lien priority of this Deed of Trust on the remaining condominium units constituting the Property and without any additional exceptions to its policy which would have priority over Beneficiary's Deed of Trust except as may be approved by Beneficiary in its sole and absolute discretion;

(e) Grantor will pay all costs and expenses incurred in connection with any such partial reconveyance, including but not limited to, recording fees, premium for title insurance endorsements and escrow fees, if any, charged by the title insurance company or other

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closing agent;

(f) Any reconveyance of this Deed of Trust as to any Release Parcel shall in no way release, modify, discharge, impair or otherwise affect the validity or enforceability of the Disposition and Development Agreement, this Deed of Trust or any of the obligations of Grantor thereunder.

3.19. Washington State Law Governs.

This Deed of Trust is to be governed by and construed in accordance with the laws of the State of Washington. At the option of the Beneficiary, the venue of any action to enforce the provisions hereof may be laid in King County, Washington.

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust, Security Agreement, and Fixture Filing as of the date first written above.

RECP/UP KENMORE, LP, a Delaware
limited partnership

By: Urban RECP Portfolio GP, LLC, a Delaware
limited liability company, its General Partner

By: _____
Matthew N. Burton, Vice President

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that Matthew N. Burton 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 Vice President of Urban RECP Portfolio GP, LLC, the general partner of RECP/UP KENMORE, LP, a Delaware limited partnership, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

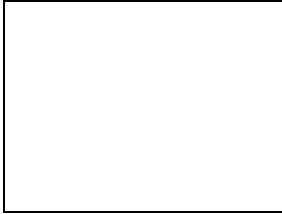
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Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

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EXHIBIT A

LEGAL DESCRIPTION

Certain real property situated in King County, Washington and more particularly described as follows:

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AFTER RECORDING RETURN TO

KIRKPATRICK & LOCKHART PRESTON GATES & ELLIS LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104 1158
Attention: Diane R. Stodke, Esq.

DEED OF TRUST, SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

GRANTOR: RECP/UP KENMORE, LP, a Delaware limited partnership

GRANTEES: (1) CITY OF KENMORE, a Washington municipal
corporation (Beneficiary)
(2) WASHINGTON ADMINISTRATIVE SERVICES,
INC. (Trustee)

Legal Description:

Abbreviated legal:

Additional legal on Exhibit A

Assessor's Tax Parcel ID No(s):

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Exhibit A Legal Description

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SCHEDULE 1
MAP OF DOWNTOWN SITE



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SCHEDULE 2
CLOSING AND DEVELOPMENT SCHEDULE FOR DOWNTOWN SITE

The City and Developer agree to the following purchase and development milestones for the Downtown Site Project:

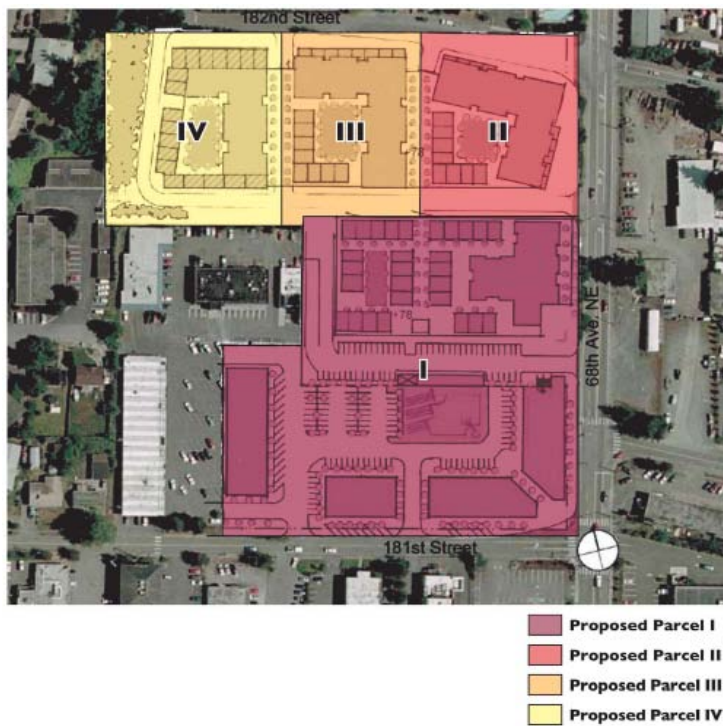
MILESTONE	DATE
Application for Commercial Site Development Permit	December 15 October 28 , 2013
City Determination re Commercial Site Development Permit	Within 90 days of submission of completed CSDP application (in accordance with Section 13.2)
Application for building permit for Phase I	April 23, 2014
Initial City determination re building permit for Phase I*	Within 90 days of submission of completed building permit application
Application for building permit for Phase II	30 days prior to Closing of Phase II
Application for building permit for Phase III	30 days prior to Closing of Phase III
Initial City determination re building permits for Phases II and III*	90 days after a completed building permit application is filed
Closing of Phase I	No later than December 15 October 22 , 2014 (subject to extension of up to 120 days in accordance with Section 10.1.1 or extension in accordance with Section 12.2)
Closing of Phase II	One year after the Closing of Phase I (subject to extension in accordance with Section 10.1.2)
Closing of Phase III	Two years after the Closing of Phase I
Commencement of Construction for each Phase	Thirty (30) days following issuance of the building permit for such Phase
Substantial Completion of each Phase	Two (2) years after commencement of construction of such Phase (subject to Unavoidable Delay)
Final Completion of each Phase	Three (3) years after commencement of construction of such Phase (subject to Unavoidable Delay)

***Note:** Assumes Developer's application is deemed complete by the City in accordance with the requirements of the Kenmore Municipal Code.

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SCHEDULE 3
MAP OUTLINING PROPOSED BOUNDARY LINE ADJUSTMENT



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CITY OF KENMORE, WASHINGTON			
AGENDA BILL SUMMARY			
AGENDA TITLE			MEETING DATE
Authorize City Manager to Execute Contract No. 11-C906 for Jail Services with Snohomish County Jail			January 24, 2011
DEPARTMENT	DIRECTOR	CONTACT PERSON	PHONE
Police	Cliff Sether	Cliff Sether	
Finance	Joanne Gregory	Joanne Gregory	425-398-8900
COST OF PROPOSAL:		ACCOUNT NUMBER:	
		01 21	
AMOUNT BUDGETED:		NAME AND FUND #:	
2011-2012 Jail Budget		General Fund	
ATTACHMENT(S) TO AGENDA PACKET ITEM:			
December 10, 2010 Memorandum Re: Recommendation to Change Jail Contract Draft Snohomish County Jail Services Contract No. 11-C906.			
SUMMARY STATEMENT:			
The City of Kenmore currently contracts with and uses the King County Jail, the Yakima Jail, and the City of Renton Jail for misdemeanor prisoners. The City of Renton Jail contract will expire and not be renewed on January 1, 2011. The City of Kenmore could potentially save as much as \$138,000 annually by entering into a contract with the Snohomish County Jail, discontinuing the Yakima Jail contract, and minimizing the use of the King County Jail. The 2011 booking and daily maintenance (housing) fees for King County Jail are expected to be \$380.21 and \$119.62, respectively. The Yakima daily maintenance fee is \$75.35. Snohomish County Jail fees are considerably lower: booking is \$90.00 and daily maintenance is \$62.50. The attached memorandum explains the jail booking process in more detail. The contract has been reviewed by the City Attorney.			
CONSISTENT WITH OR COMPARISON TO PAST COUNCIL POLICIES, ORDINANCES, DIRECTION:			
Continue to improve the effectiveness and efficiency of City services			
RECOMMENDED CITY COUNCIL ACTION/SUGGESTED MOTION:			
Authorize City Manager to Execute Contract No. 11-C906 for Jail Services with Snohomish County Jail			
REVIEWED BY FINANCE DIRECTOR: JMG	REVIEWED BY CITY ATTORNEY:	APPROVED BY CITY MANAGER:	
TODAY'S DATE: December 21, 2010	REVISION DATE(S):	FILE NAME & PATH (HYPERLINK)	

I:\Admin & Finance\AB SnoCounty Jail Contract.docx

IXB. Authorize City Manager to Execute Contract No. 11-C906 for Jail Services with Snohomish County Jail. – Joanne Gregory, Finance Director and Cliff Sether, Kenmore Police Chief



The City of Kenmore

MEMORANDUM

TO: Frederick Stouder, City Manager

FROM: Cliff Sether, Chief of Police
Joanne Gregory, Finance Director

DATE: December 10, 2010

RE: Recommendation to Change Jail Contract

The City of Kenmore currently uses the King County Jail, Yakima Jail and the City of Renton Jail to book misdemeanor prisoners. Due to recent booking enhancements (video conferencing) and a more favorable fee structure at the Snohomish County Jail, we are recommending that the City of Kenmore enter into a contract with the Snohomish County Jail and not renew the contract with the Yakima Jail. The City of Renton has terminated the agreement with City of Kenmore effective January 1, 2011. It is estimated that the City may save approximately \$139,000 per year based on 2009 jail figures.

For 2011, the King County Jail booking fee is expected to be \$380.21 and the daily maintenance fee \$119.62. Yakima's maintenance fee is \$75.35. The Snohomish County Jail booking fee is \$90.00 and the daily maintenance fee is \$62.50.

As background information, the process that occurs now, using the three jails, King County, Yakima, and Renton, is as follows:

- When a subject is arrested for a misdemeanor charge he/she is booked into the King County Jail. A booking fee of \$380.21 is charged to the City.
- If the subject remains in jail for longer than 4 hours, a maintenance charge of \$119.62 per day is also charged to the City until the subject is released.
- The prisoner has a "First Appearance" hearing within 48 hours of being incarcerated. These hearing are held in the jail courtroom to determine if the prisoner qualifies for bail, and if so, then the amount of bail is set.
- The defendants are represented by the City's contract public defender. The King County Prosecutor's Office provides a prosecutor to attend these hearings.
- If the prisoner cannot make bail, they are usually transferred to the Yakima Jail until they appear in court the next Wednesday.
- Kenmore's only court day is Wednesday of each week.
- Yakima also takes the City's post sentencing prisoners to serve out their jail sentence.
- Yakima transports the prisoners, who have court hearings, every Wednesday to the City of Renton jail, for the pass through prisoner traffic from Yakima.

- Renton charges the City \$50.00 for each prisoner they temporarily hold on Wednesday mornings. Renton is used because it is less expensive than the King County \$380.21 booking fee. However, Renton will not be available after January 1, 2011.
- The City of Kenmore Police Department is responsible for transporting prisoners every Wednesday for court and there are usually prisoners at both locations, King County and Renton.
- One to two Officers, depending on the number of prisoners, are assigned to do the transports, which take about 4 hours from start to finish.
- If the Yakima prisoners are sent back to Yakima they are taken to King County Jail for holding, since Renton never has room. The City is again charged a booking fee.

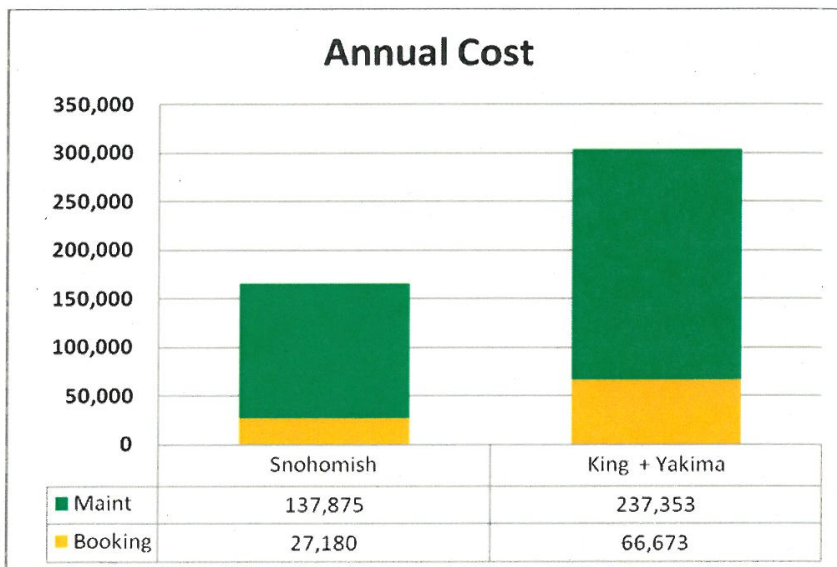
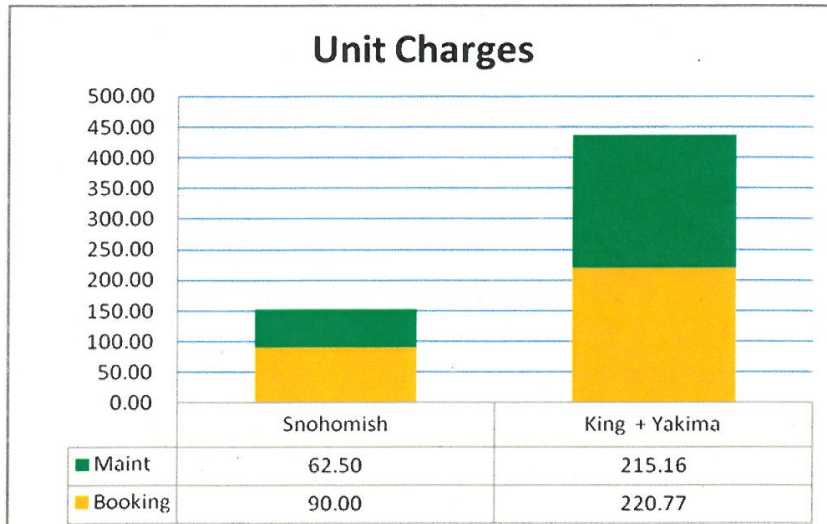
With a Snohomish County Jail contract, the City would be able to book and retain all misdemeanor prisoners in the Snohomish County Jail, and eliminate the Yakima transports and holding. The King County jail would only be used to house prisoners for warrant arrests made by outside (non-Kenmore) agencies.

- Snohomish County Jail charges a \$90.00 booking fee and a daily maintenance fee of \$62.50 for those prisoners staying longer than 4 hours.
- First appearance hearings would be handled through video conferencing at the Snohomish County Jail. A public defender would still be required to be present.
- Shoreline Court would have a judge preside over the hearings via a video conferencing link at Shoreline District Court. The Kenmore City Prosecutor would provide bail recommendations to the Judge and would not be required to be present.
- Kenmore would be charged \$125.00 per hour for video conferencing with the hourly rate rounded to the nearest 15 minute interval, thus only paying for actual time used.
- Kenmore Officers would still be required to transport Kenmore prisoners every Wednesday. However, they would only have to be picked up and delivered to one location, saving valuable officer time.

Jail Cost Comparison Charts

The figures below are based on 2009 jail activity and 2009 fees. The graphs depict actual King County and Yakima jail costs compared to what the costs would have been using the Snohomish County Jail. The savings from bookings and daily maintenance would have been \$138,971.

2009	Bookings	Daily Maintenance Charges
Snohomish	302 x \$90.00 = \$27,180	2206 x \$62.50 = \$137,875
King and Yakima	302 x \$220.77 = \$66,673	1105 x \$115.36 = \$127,473 1101 x \$99.80 = \$109,880
Difference (Savings)	\$39,493	\$99,478



The only new costs associated with changing to the Snohomish County Jail would be:

- a slight adjustment in the City Prosecutor contract, for the extra work in providing bail recommendations to the court; of \$3,600 annually (from \$9,000 per month to \$9,300 per month).
- the video conferencing charge, which is anticipated to use about 6% (\$8,400) of the savings of \$138,971, and

Jail Contract
December 10, 2010
Page 4

- a slight increase in the public defender charges for video conference first appearances in Everett vs. Seattle.

There is a significant savings to the City of Kenmore by contracting with the Snohomish County Jail with little to no negative operational impact to the police department, therefore we are recommending that the City of Kenmore enter into a contract with the Snohomish County Jail

If there are questions that can be addressed prior to the January 10, 2011 City Council meeting, please email City Manager Fred Stouder at: fstouder@kenmorewa.gov

INTERLOCAL AGREEMENT FOR JAIL SERVICES

THIS AGREEMENT is entered into by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (hereinafter COUNTY) and the City of KENMORE a municipal corporation of the State of Washington (hereinafter CITY).

NOW, THEREFORE, in accordance with the Interlocal Cooperation Act (Chapter 39.34 RCW) and the City and County Jails Act (Chapter 70.48 RCW), the COUNTY and CITY hereby agree as follows:

Section 1 Definitions

- A. The term "Jail" means a COUNTY operated facility primarily designed, staffed, and used for the housing of adults charged or convicted of a criminal offense; for the punishment, correction, and rehabilitation of offenders convicted of a criminal offense; or for confinement during a criminal investigation or for civil detention to enforce a court order. Upon the date of the execution of this Agreement, Jail includes the Snohomish County Main Jail and Community Corrections.
- B. The term "Book" means the act of registering, screening, and examining inmates for confinement in the Jail; inventorying and safekeeping inmates' personal property; maintaining all computerized records of arrest; performing warrant checks; and all other activities associated with processing an inmate for confinement.
- C. The term "CITY Inmate" means a person Booked or housed in the Jail for whom the CITY is a billable agency under the procedure set out in Section 6 of this Agreement.
- D. The term "COUNTY Inmate" means any person Booked or housed in the Jail who is not a CITY Inmate.
- E. The term "Bureau Chief" means the Corrections Bureau Chief, Snohomish County Sheriff's Office.
- F. The term "CITY Municipal Code" means the Municipal Code of the CITY of Kenmore.
- G. The term "CITY Municipal Court" means the Court of Limited Jurisdiction charged with hearing violations of the CITY Municipal Code, including any division of the COUNTY District Court acting for the CITY via a service contract.
- H. The term "Cities" means collectively all cities that have executed Interlocal Agreements for Jail Services with the COUNTY in substantially the same form as this Agreement.

I. The term "Force Majeure" means war, civil unrest, and any natural event outside of the party's reasonable control, including fire, storm, flood, earthquake, or other act of nature.

J. The term "Business Day" means Monday through Friday, 8:00 a.m. until 5:00 p.m., excluding COUNTY recognized holidays.

K. The term "maximum allowable population level" means the greatest allowable number of inmates that can be held in the Jail in a safe, secure, and humane manner. The maximum allowable population level shall be determined by the Sheriff or his/her designee.

L. The term "fit for Jail" means that an inmate is medically able to be housed in jail and does not need medical attention that would require treatment at a hospital or other type of medical facility.

Section 2 Purpose

Under the authority of Chapter 70.48 RCW, the COUNTY maintains a Jail. The CITY from time-to-time desires to confine CITY Inmates in the Jail. In return for payment as specified in Section 9, the COUNTY agrees to furnish its facilities and personnel for confinement of CITY Inmates based on the rules and conditions set forth in this Agreement and any attachments thereto.

Section 3 Term

This agreement shall be in effect from the date of signature and shall continue in effect until December 31, 2016, or until terminated by either party in accordance with Section 4, PROVIDED that the COUNTY'S obligations are contingent upon local legislative appropriation of necessary funds in accordance with applicable laws and the Snohomish County Charter.

Section 4 Termination

This Agreement may be terminated by either party for any reason at any time prior to its expiration upon ninety (90) calendar days prior written notice provided pursuant to Section 17 hereof. The notice shall state the grounds for termination and the specific plans for accommodation of the affected jail population.

Section 5 Population Level Limitation

A. In the event that the Jail's acceptable population level is reached, inmates who are confined on Snohomish County charges or commitments will have first priority for continued incarceration. In the event the inmates are required to leave the COUNTY Jail, out-of-county inmates shall be the first inmates removed by the booking jurisdiction.

When out-of-county inmates are removed, cities that have signed interlocal agreements for jail services with the COUNTY shall have their inmates removed last in the order those agreements were entered into. Every effort will be made to manage the average daily population (ADP), including booking restrictions as a method to lower the ADP. The Bureau Chief shall have final authority on ADP reduction measures and will provide at least thirty (30) days notice to the CITY to remove its inmates.

B. The maximum allowable CITY inmate population is forty (40) inmates per day, unless otherwise specified by the Bureau Chief.

Section 6 Placing CITY Inmates in Jail by Law Enforcement Personnel

Subject to the conditions stated herein, and the constraints listed in Section 5, the COUNTY will accept arrested persons delivered to the Jail for confinement, including persons arrested for, or convicted of, violations of the CITY Municipal Code and will hold them until such time as they are lawfully discharged from custody pursuant to law, or returned to the custody of the CITY.

A. The CITY law enforcement personnel will follow all Jail procedures when presenting arrested persons for Booking.

B. The Jail will not receive a person into custody until the law enforcement personnel having custody of the person provides the Jail with proper documentation of the Jail's legal basis to hold the person in custody. Proper documentation will consist of either an arrest warrant, the order of a court of competent jurisdiction, or a properly completed Notice of Arrest on the form provided by the court into which the person is being cited.

C. An arrested person will not be considered a CITY Inmate for purposes of this Agreement until transfer of custody is complete. Transfer of custody from CITY law enforcement personnel to the Jail will not occur until the Jail receives both the legal basis to hold the arrested person and has medically cleared the arrested person as "fit for Jail."

D. CITY Inmates shall be billable to the CITY when:

a. Inmate Status:

i. The inmate is being held on violation of a misdemeanor or gross misdemeanor, on a warrant or court order issued by the CITY'S Municipal Court;

ii. The inmate is not being held on any active COUNTY felony charge; and

iii. The inmate is not a Federal Inmate who can be removed by the

Federal agency without regard to local charges.

b. Other

- i. The inmate is held for the CITY in accordance with section 6(D)(a); and
- ii. The inmate is also being held by the State for violation of the Offender Accountability Act and the CITY will not allow the State to move the inmate

E. CITY Inmates shall not be billable to the CITY when:

- a. The inmate receives a personal recognizance release, posts bail, or finishes serving a sentence on that charge;
- b. The charge is dismissed, nor filed, or otherwise withdrawn;
- c. The charge carries a consecutive sentence the inmate has not yet begun to serve; or
- d. The CITY cannot remove the inmate until other charges requiring the inmate's custody in Jail are satisfied.

Section 7 Walk In Commitments

A. Subject to the conditions stated herein, and the constraints listed in Section 5, the COUNTY will accept persons sentenced to a term of confinement to Jail by a CITY Municipal Court, including persons convicted of violations of the CITY Municipal Code and will hold them until such time as they are lawfully discharged from custody pursuant to law and the terms of the judicial Order of Commitment, or returned to the custody of the CITY.

B. A person reporting for commitment will not be accepted for Booking until the COUNTY receives a valid judicial Order of Commitment from the CITY Municipal Court and the Jail has medically cleared the person reporting for commitment as "fit for Jail."

C. A person reporting for commitment will not be considered a CITY Inmate for the purposes of this Agreement until the person is accepted for Booking. In the event that a person reporting for commitment is not accepted for Booking, the Jail will notify the CITY Municipal Court of the person's non-acceptance and the reason for the non-acceptance. Notification will occur on the same day if the non-acceptance occurs during a Business Day or on the following Business Day if the non-acceptance occurs after the end of a Business Day.

Section 8 Rules Relating to Inmates in Custody

- A. Persons convicted of violations of the CITY Municipal Code may earn early release time of up to one-third (1/3) of the total sentence as authorized by Chapter 9.94A RCW.
- B. Investigators directed by the CITY attorney or CITY police officers will have the right to interview CITY inmates inside the confines of the Jail, subject to necessary operational and security rules. Interview rooms will be made available on an equivalent basis to all jurisdictions with inmates in the Jail.
- C. CITY Inmates will be in the complete charge of the COUNTY and subject to all applicable rules of the Jail, including any emergency security rules imposed by the Bureau Chief. It is expressly agreed by the CITY that visitation and telephone privileges of CITY inmates, if any, will be the same as COUNTY inmates and subject to applicable requirements of law.
- D. The Jail will be administered by the COUNTY in accordance with the rules and regulations of the COUNTY, COUNTY ordinances and in accordance with the rules and regulations of any agency of the State of Washington empowered to make rules governing the administration of COUNTY jails.
- E. CITY Inmates may be made inmate workers at the discretion of the COUNTY, and such inmates may be allowed by the COUNTY to work on public property.

Section 9 Fees

- A. The CITY will pay the COUNTY fees for services as follows:
 - a. Booking Fee: A fee shall be assessed for the Booking of CITY Inmates by or on behalf of the CITY into the Jail. It is the only fee charged for inmates released within four (4) hours of Booking into the Jail.
 - b. Daily Maintenance Fee: A daily maintenance fee shall be assessed for each calendar day that a CITY Inmate is housed in the Jail. This fee shall not be charged for inmates released within four (4) hours of Booking.
 - c. Work Release Daily Fee: A work release daily maintenance fee shall be assessed for each calendar day that a CITY Inmate is housed in the Work Release facility.
 - d. In-Custody Work Crew Daily Fee: An in-custody work crew daily fee shall be assessed for each calendar day that a CITY Inmate participates in the in-custody work crew program.

- e. Electronic Home Detention (EHD) Daily Fee: An electronic home detention daily fee shall be assessed for each calendar day that a CITY Inmate participates in the EHD program.

B. The 2010 rates for the Booking and Daily Maintenance Fees shall be ninety dollars (\$90) per Booking and sixty-two dollars and fifty cents (\$62.50) per day for each housing day. The Work Release Daily Fee and the In-Custody Work Crew Daily Fee, which are in lieu of the Daily Maintenance Fee, shall be forty-two dollars (\$42) per day for each housing day. The EHD Daily Fee, which is also in lieu of the Daily Maintenance Fee, shall be sixteen dollars (\$16) per day.

C. The 2010 rates outlined in Section 9(B) will increase each calendar year during the term of this Agreement by a rate equal to ninety percent (90%) of the Bureau of Labor Statistics Consumer Price Index (Urban Wage Earners) for the Seattle-Tacoma-Bremerton area, measured from June of the prior year to June of the current year. In no event shall the increase be greater than three percent (3%) per calendar year.

D. The billing process calculates booking and daily inmate charges using proportional methodology. The process for proportional billing is described in Exhibit A, and hereby incorporated by reference. If multiple jurisdictions have an open misdemeanor charge on an individual, the jurisdictions will share the cost as long as an open charge persists for that agency. A contract agency is billed for booking an individual for its misdemeanor charge or charges. If there are open charges with more than one contract agency, each agency will be billed in equal portions. The same process applies for determining the daily billing. When a contracting agency's charge is closed, that agency drops from the proportional billing process. The proportional billing is recalculated without that agency. If an agency has multiple open misdemeanor charges, the agency is only billed as one element of the proportional booking process, equal to all others with open misdemeanor charges. Additionally, there will be no partial days billed. The billing process looks at who is billable to whom each day and bills accordingly.

E. In July each year, the COUNTY will provide the CITY with rates for the following year by notice to the CITY, as provided in Section 17. The new fees will go into effect with the January billing of the following year.

F. Costs incurred for necessary medical services to CITY Inmates beyond routine medical examinations, tests, procedures and prescriptions will be borne by the CITY in addition to the basic rates set out in Section 9(B). If the inmate suffers an injury while in the custody of the Jail, the COUNTY will bear all expenses not covered by the inmate's health insurance and/or public assistance. The Custody or Medical Supervisor(s) on duty in the Jail is hereby granted the authority to seek necessary medical services for CITY Inmates without consulting with CITY officials; PROVIDED, that when it appears that a CITY Inmate will incur unusual or substantial medical expenses due to illness, the

COUNTY shall notify the CITY prior to seeking treatment, unless immediate treatment is required. If the Jail medical staff order immediate treatment, the COUNTY will notify the CITY as soon after the event as reasonably possible. The CITY and the COUNTY will comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Snohomish County policies and procedures regarding HIPAA. The COUNTY will credit amounts received from the inmate's own health insurance and applicable public assistance before billing the CITY.

Section 10 First Appearance Video Court Hearings

Operation and fees associated with the CITY's use of the COUNTY's "Video Court" are described in Exhibit B, attached hereto and hereby incorporated by this reference.

Section 11 Transport

A. The CITY agrees to be responsible for inmate transportation to and from the Jail for Court, except as identified in Exhibit B, First Appearance Video Court Hearings.

B. The COUNTY will provide transportation and guarding of CITY Inmates to and from medical facilities when the Jail Medical Supervisor has determined that such treatment is necessary under Section 9(F). The CITY will furnish all other transportation of CITY Inmates.

Section 12 Method of Payment & Billing Dispute Resolution Procedure

A. The COUNTY shall transmit billings to the CITY monthly. Within thirty (30) days after receipt, the CITY shall pay the full amount billed.

B. Payments from the CITY shall clearly indicate that the payment is for Jail services and the period covered by the payment.

C. If CITY disputes amounts billed, it has thirty (30) days following receipt of billing to notify the COUNTY of any alleged discrepancies calculating the amount the CITY owes the COUNTY. The CITY will provide the COUNTY with documentation for all alleged discrepancies. The COUNTY will respond to any alleged discrepancies within fifteen (15) working days of receipt of documentation. Credits for resolved discrepancies will be reflected on next billing cycle. The COUNTY will notify the CITY of all unresolved discrepancies.

D. Withholding of any amount billed or alleging that any party is in violation of any provision of this Agreement shall constitute a dispute, which shall be resolved as follows:

- a. The Bureau Chief and CITY Police Chief or their designees shall attempt to resolve the dispute by negotiation. If such negotiation is unsuccessful,

the dispute shall be appealed to the City Manager of the CITY and the COUNTY Executive for settlement. If not resolved within thirty (30) days of referral, the City Manager of the CITY and the COUNTY Executive may by mutual written consent 1) apply to the Presiding Judge of the Snohomish County Superior Court for appointment of an arbitrator whose decision shall be final and binding on both parties, OR 2) may invoke the procedures set out in RCW 39.34.180 (3) for binding arbitration. Each party shall pay one-half of any arbitration fees.

- b. Any amount withheld from a billing, which is determined to be owed to the COUNTY pursuant to the dispute resolution procedure described herein, shall be paid by the CITY within thirty (30) days of the date of the negotiated resolution or arbitration determination.

E. Any undisputed billing amount not paid by the CITY within forty-five (45) days of receipt of the billing, and any amounts found to be owing to the COUNTY as a result of the billing dispute resolution procedure that are not paid within thirty (30) days of resolution, shall be conclusively established as a lawful debt owed to the COUNTY by the CITY, shall be binding on the parties and shall not be subject to legal question either directly or collaterally. This provision shall not limit a CITY's ability to challenge or dispute any billings that have been paid by the CITY.

F. If the CITY fails to pay a billing within forty-five (45) days of receipt, the COUNTY will notify the CITY of its failure to pay and the CITY shall have ten (10) days to cure non-payment. In the event the CITY fails to cure its nonpayment, the CITY shall be deemed to have waived its right to house CITY Inmates in the Jail and, at the COUNTY's request, will remove all CITY Inmates already housed in the Jail within thirty (30) days. Thereafter, the COUNTY, at its sole discretion, will accept no further CITY Inmates until all outstanding bills are paid.

G. The COUNTY may charge an interest rate equal to the interest rate on the monthly COUNTY investment earnings on any undisputed billing amount not paid by the CITY within forty-five (45) days of receipt of the billing, and any amounts found to be owing to the COUNTY as a result of the billing dispute resolution procedure.

H. Each party may examine the other's books and records to verify charges. If an examination reveals an improper charge, the next billing statement will be adjusted appropriately.

Section 13 Indemnification

A. The COUNTY shall indemnify and hold harmless the CITY and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent action or omission, tortious actions, or civil rights violations under State or Federal law of the COUNTY, its officers, agents, and employees, or any of them related to the services provided under this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the CITY, the COUNTY shall defend the same at its sole cost and expense; provided, that, the CITY retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the CITY and its officers, agents, and employees, or any of them, or jointly against the CITY and the COUNTY and their respective officers, agents, and employees, or any of them, the COUNTY shall satisfy the same.

B. The CITY shall indemnify and hold harmless the COUNTY and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent act or omission, tortious actions, or civil rights violations under State or Federal law of the CITY, its officers, agents, and employees, or any of them related to the arrest or confinement of a CITY Inmate. In the event that any suit based upon such a claim, action, loss, or damage is brought against the COUNTY, the CITY shall defend the same at its sole cost and expense; provided that the COUNTY retains the right to participate in said suit if any principle of governmental or public laws is involved; and if final judgment be rendered against the COUNTY, and its officers, agents, and employees, or any of them, or jointly against the COUNTY and the CITY and their respective officers, agents, and employees, or any of them, the CITY shall satisfy the same.

C. In the event of the concurrent negligence, tortious action, or civil rights violations of the parties, the COUNTY's and the CITY's obligations hereunder shall apply to the percentage of fault attributable to the COUNTY and CITY or the COUNTY's and CITY's agents, employees, or officials respectively.

D. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each party's indemnity under Washington's Industrial Insurance act, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide a full and complete indemnity of claims made by the parties' employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

E. In executing this agreement, the COUNTY does not assume liability or responsibility for or in any way release the CITY from any liability or responsibility, which arises in whole or in part from the existence or effect of the CITY Municipal Code, rule, or regulations. If any cause, claim, suit, action, or administrative proceeding is

commenced in which the enforceability and/or validity of any such CITY Municipal Code, rule or regulation is at issue, the CITY shall defend the same at its sole expense and if judgment is entered or damages are awarded against the CITY, the COUNTY, or both, the CITY shall satisfy the same, including all chargeable costs and attorney's fees.

F. The terms of Section 13 shall survive the termination or expiration of this Agreement.

Section 14 Non-waiver of Rights

Except as provided in subsections 13(D), 13(E) or 13(F), no waiver of any right under this Agreement shall be effective unless made in writing by the authorized representative of the party to be bound thereby. Failure to insist upon full performance of any one or several occasions does not constitute consent to or waiver of any later non-performance nor does payment of a billing or continued performance after notice of a deficiency in performance constitute an acquiescence thereto. The parties are entitled to all remedies in law or equity.

Section 15 No Creation of or Expansion of Duty to Supervise; No Partnership or Joint Venture

A. Nothing in this Agreement shall be construed as creating, modifying, or expanding any duty on the part of the COUNTY. By agreeing to provide the Community Corrections Programs described herein to the CITY, the COUNTY is not agreeing to any supervision of CITY inmates except as specifically provided herein. Nothing in this Agreement shall be interpreted as a delegation by the CITY, the CITY Municipal Court or the CITY Municipal Court's probation department to the COUNTY of its duty of supervision.

B. Nothing in this Agreement shall be construed to render the parties partners or joint ventures.

Section 16 Modification / Amendment

A. All provisions of this Agreement may be modified and amended with the mutual written consent of the parties. This Agreement may not be modified orally. Modification must be accomplished with the same formalities as are required for execution of this agreement.

B. The CITY and COUNTY may elect, by mutual agreement, to reopen negotiations for the express purpose of changing the CITY's agreed upon maximum allowable inmate population in the following calendar year. If the CITY and COUNTY are not able to come to an agreement on a change in the agreed upon number of inmate days, the current year's agreed upon number of inmate days shall remain the same in the following year.

C. In the event of a change in State law or a ruling from a precedent setting court that significantly impacts the incarceration of CITY Inmates, the COUNTY and the CITY may reopen negotiations to amend the agreed upon number of inmate days used in the current year and following year.

Section 17 Notices

A. All notices required by this Agreement to be given to the COUNTY shall be made in writing and personally delivered or sent by certified mail to the Bureau Chief.

B. All notices required by this Agreement to be given to the CITY shall be made in writing and personally delivered or sent by certified mail to the City Manager of the CITY or his designee.

C. The City Manager of the CITY or his designee shall be the administrator of this Agreement pursuant to RCW 39.34.030(4)(a).

Section 18 Entire Agreement

A. This Agreement represents the entire understanding of the parties and supersedes any oral representations that are inconsistent with or modify its terms and conditions.

B. Nothing in this Agreement shall limit the ability of the COUNTY to contract with other entities at different rates or terms.

Section 19 Force Majeure

In the event either party's performance of any of the provisions of this Agreement become impossible due to Force Majeure, that party will be excused from performing such obligations until such time as the Force Majeure event has ended and all facilities and operations have been repaired and/or restored.

Section 20 Severability

If any provision of this Agreement is found to be invalid or contrary to law, the remainder of this Agreement shall not be affected thereby.

Section 21 Filing

Pursuant to Chapter 39.34 RCW, a copy of this Agreement as fully executed shall be filed by the COUNTY with the County Auditor and by the CITY with the City Clerk.

IN WITNESS WHEREOF, the COUNTY and the CITY have executed this Agreement by subscribing their names as follows:

SNOHOMISH COUNTY

CITY OF KENMORE

Aaron Reardon Date

Date
COUNTY EXECUTIVE

~~Robert L. Olander~~ Fred Stouder
CITY MANAGER

ATTEST:

APPROVED AS TO FORM:

Date Date

~~Ian Sievers~~ Rod Kaseguma
CITY ATTORNEY

APPROVED AS TO FORM:

DEPUTY PROSECUTING ATTORNEY Date

EXHIBIT A PROPORTIONATE BILLING

Each day the COUNTY shall examine the open charges for each active booking and apply uniform rules for determining billable charges and identifying the billable agencies.

The procedure for selecting the billable charges and responsible agencies is outlined below. The program proceeds in sequence through the series of steps only as far as needed to isolate a billable charge and determine the agency responsible for payment.

1. Select all felony charges. If there is more than one, go to Rule #2. If there is a felony but no State DOC hold, do not bill. If there are no felony charges, go to Rule #5.
2. Select the Arresting Agency DOC-Parole-Olympia. If there is no other arresting agency charges, determine if charge is State DOC and bill accordingly.
3. If there is a State DOC hold and additional local charges (Snohomish County or contracting cities; felony, misdemeanor, or gross misdemeanor) do not bill.
4. If there is a State DOC hold and non local additional charges (from other county and municipal agencies not contracting services with Snohomish County), bill State DOC.
5. Select all open misdemeanor charges. Bill the arresting agency. If there are open charges with more than one contract agency, go to Rule #6.
6. If there are open misdemeanor charges with multiple contract agencies, bill each agency in equal portion (e.g., two agencies 50/50). If an agency has multiple open misdemeanor charges, the agency is only billed as one element of the proportional booking process, equal to all others with open misdemeanor charges.

Example: If municipal agency A has one open misdemeanor and municipal agency B has two open misdemeanor charges at the same time, each agency is billed for 50% of the day.

7. When an agency's charge is closed, that agency drops from the proportional billing process. The proportional billing is recalculated without that agency.

Example: Municipal agency A has one open misdemeanor and municipal agency B has an open misdemeanor charge. Municipal agency B's charge is closed. Agency A is billed for 100% from then on.

8. When there is a Snohomish County misdemeanor charge and contract agency misdemeanor charge, the County is billed its proportional share.

EXHIBIT B
FIRST APPEARANCE VIDEO COURT HEARINGS

Section 1 Definitions

The term "Video Court" shall include, by way of example but not by way of limitation, the following types of services: use of County video camera(s), audio technology, and the video courtroom facility, the scheduling of inmates for video court, the moving of inmates to and from video court, the processing of court paperwork, and the faxing of court paperwork to and from the City's municipal court for signatures.

Section 2 Use of Video Court

The COUNTY will provide use of their video courtroom to the CITY at a mutually agreed upon schedule and time. The County's video court operates Monday through Friday, and the initially agreed upon reserved time slot for CITY use of the video court is 14:30 to 16:00 daily. The reserved time slot may be changed by mutual agreement of both the COUNTY and CITY.

Section 3 Video Court Fee

- A. The CITY agrees to pay one hundred twenty-five dollars (\$125.00) per hour for use of Video Court. The hourly rate shall be rounded to the nearest 15 minute interval. If the use of the Video Court is eight (8) minutes or less, the time interval shall round down; if the use is greater than eight (8) minutes, the interval shall round up.
- B. The COUNTY will bill the CITY for Video Court services rendered each month by adding a separate column to the CITY's invoice labeled "Video Court".

Section 4 Video Court Operations

- A. Video court operations between the COUNTY and the King County District Court shall be governed by a set of standard operating procedures to be developed jointly between the COUNTY, the CITY, and the King County District Court.

Section 5 Transportation to First Appearance Hearings In Lieu of Video Court

- A. In the event of a technical problem with video court that the COUNTY or CITY is unable to repair in a timely manner, the COUNTY agrees to transport City inmates to the appropriate court for first appearance before a judge.

B. Due to non-operation of video court on Saturdays, the COUNTY also agrees to transport CITY inmates on Saturdays to the appropriate Court as determined by the CITY at the proper time for the CITY's first appearance calendar in that Court.

C. Transport services as described in this Section of this Exhibit will be paid for by the CITY at a rate of seventy-five dollars (\$75.00) per hour. If however inmate transports to the City's municipal court for first appearance hearings need to be accomplished by two custody deputies instead of one, the City will be billed at a rate of one hundred twenty-five (\$125.00) per hour. The hourly rate, regardless of the dollar amount, shall be rounded to the nearest fifteen (15) minute interval. If the time is eight (8) minutes or less, the time interval shall round back; if the time is greater than eight (8) minutes, the interval shall round forward. Time shall be calculated from the time the transport leaves the COUNTY jail sally port until the time the transport returns to the COUNTY jail sally port. In all cases the COUNTY will have the sole responsibility to determine the number of custody deputies needed to complete the transport.

D. The COUNTY will bill the City for first appearance hearing transport services rendered each month by adding a separate column to the CITY's invoice labeled "First Appearance Hearing Transport".

EXHIBIT C
COMMUNITY CORRECTIONS OPTIONS

Section 1 Definitions

- A. "Community Corrections Programs" means alternative sentencing programs offered by the COUNTY to the CITY pursuant to this Agreement, including Electronic Home Detention with Electronic Home Monitoring, Work Education Release, and Work Crews. The Community Corrections Programs are more fully defined and described in Section 2 of this Exhibit. "Community Corrections Program" or "Program" means any one of the Community Corrections Programs.
- B. "Electronic Home Detention" or "EHD" means that Community Corrections program described in Section 3 of this Exhibit.
- C. "Jail Services Agreement" means that interlocal agreement dated _____, between the CITY and the COUNTY for the provision of services at the COUNTY Jail.
- D. "Work Crew In Custody" or "WC In Custody" means that Community Corrections Program described in Section 3(A) of this Exhibit.
- E. "Work Crew Out of Custody" or "WC Out of Custody" means that Community Corrections Program described in Section 3(B) of this Exhibit.
- F. "Work Crews" means both Work Crew In Custody and Work Crew Out of Custody.
- G. "Work Education Release" or "WER" means that Community Corrections Program described in Section 3 of this Exhibit.

Section 2 Purpose

- A. The CITY from time to time desires to confine CITY Inmates in the COUNTY Jail. The purpose of this Agreement is to make a wider variety of sentencing options available to the CITY, which has contracted with the COUNTY for Jail services.
- B. In addition to Jail services provided to the CITY pursuant to separate contract and subject to availability, the COUNTY will make available to the CITY the following Community Corrections Programs:
- a. Electronic Home Detention;
 - b. Work Education Release; and
 - c. Work Crew – In Custody.

Section 3 Eligibility and Acceptance into Community Corrections Programs

A. CITY inmates held in the custody of the COUNTY may serve their time in a Community Corrections Program if Program services are available and if all of the following requirements are met:

- a. The CITY Inmate has been prescreened by the COUNTY for the purpose of assisting the court in its decision related to sentencing the offender to a Community Corrections alternative or confinement in the County Jail.
- b. The COUNTY has found that the CITY Inmate meets all statutory and Program Eligibility Requirements; and
- c. The CITY Inmate has been ordered into the Program by the CITY's Municipal Court.

B. CITY Inmates not held in the custody of the COUNTY may also serve their time in a Community Corrections Program if all of the above requirements are met.

C. Additionally, if a CITY Inmate who is sentenced to secure confinement meets the requirements set forth in Section 3(A) of this Exhibit, the CITY Inmate may be classified as a minimum security resident (MSR) and relocated as spelled out in Snohomish County Code 5.20.020.

D. If a CITY Inmate is sentenced or otherwise ordered into a Community Corrections Program by a court or courts on charges from multiple jurisdictions, the CITY will be billed for its fractional share (based on the number of jurisdictions) of the Program charges, PROVIDED, HOWEVER, that the COUNTY may refuse Program admission for a CITY Inmate if any of those multiple jurisdictions (other than the COUNTY) have not entered into an agreement in substantially the same form as this Agreement. For purposes of this subsection, the COUNTY will be considered the financially responsible jurisdiction for all State agency-filed misdemeanor and gross misdemeanor charges.

Section 4 Transfers of CITY Inmates into the Community Corrections Program

A. A CITY inmate meeting the eligibility requirements set forth in Section 3(A) of this Exhibit shall be transferred into the Community Corrections Program effective on the date agreed to by the CITY and the COUNTY in the following manner:

- a. A CITY Inmate already in COUNTY custody will be transferred to the Program by the COUNTY; and
- b. A CITY Inmate not in COUNTY custody on the effective date of his or her transfer to the Program shall be transferred to the Program (1) by the CITY if the

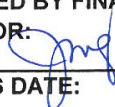
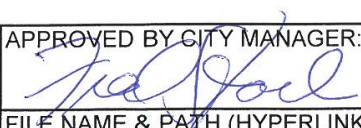
inmate is then in CITY custody or (2) by the CITY Inmate's presenting himself or herself to the COUNTY, in either case on the date and at the time and place agreed to by the CITY and the COUNTY.

Section 5 Termination of CITY Inmate from Community Corrections Program

- A. Once a CITY inmate is taken into a Community Corrections Program, the inmate shall remain in the Program for the remainder of his or her term of confinement, unless:
 - a. The CITY Municipal Court orders the CITY inmate terminated from the Program or otherwise amends its earlier order;
 - b. The CITY inmate is no longer eligible for, and is terminated by the COUNTY from, the Program. The termination decision shall be made by the COUNTY, in its sole discretion, and is not subject to review. An inmate who was previously found to be eligible may be found ineligible to continue in a Program either (1) because of actions by the inmate while within the Program (including but not limited to violation of rules established by the COUNTY or a new criminal conviction) or (2) due to newly discovered information which, if known to the COUNTY during initial screening, would have rendered the inmate ineligible on either statutory or Program grounds.
- B. A CITY Inmate who is terminated by the COUNTY from a Program shall
 - a. If then in the physical presence or custody of the COUNTY by virtue of his or her participation in a Program, be taken into custody by the COUNTY and transported to the COUNTY Jail to serve the remainder of his or her term of confinement; or
 - b. If not then in the physical presence or custody of the COUNTY by virtue of his or her participation in a Program, become the immediate responsibility of the CITY for all purposes including, but not limited to, duty to apprehend.
- C. If the participation of a CITY Inmate in a Community Corrections Program is terminated by the COUNTY pursuant to Section 5(A)(b) of this Exhibit, the COUNTY shall notify the CITY and the CITY Municipal Court in writing within twenty-four (24) hours following the termination. Upon termination, the CITY shall be responsible for notifying the CITY Municipal Court and, if appropriate, seeking revision of the CITY Municipal Court's order. The COUNTY will contact the CITY Law Enforcement agency to notify them of the violation.
- D. In the event that a CITY Inmate is terminated from a Community Corrections Program and is transferred to the COUNTY Jail pursuant to Section 5(B)(a) of this Exhibit, the CITY shall be billed for the day in which the transfer occurs

pursuant to its Jail Services Agreement and not pursuant to this Agreement.

- E. In the event that the CITY inmate is terminated from a Community Corrections Program on a day in which he or she has not received services pursuant to this Agreement, the COUNTY shall not bill the CITY for that day.
- F. In addition to fees charged to the CITY pursuant to this Agreement, the COUNTY may also charge CITY Inmates directly for daily monitoring costs (as noted in the vendor contract) associated with their participation in a Program, i.e., for EHD and if applicable work release charges, at the same rate and under the same circumstances as COUNTY inmates are charged.

CITY OF KENMORE, WASHINGTON AGENDA BILL SUMMARY			
AGENDA TITLE			MEETING DATE
Discussion and Adoption of Ordinance No. 11-0320 Amending Section 9.50.030 of the Kenmore Municipal Code Relating to the Definition of the Crime of Prostitution, and Providing for an Effective Date - Fred Stouder City Manager and Cliff Sether, Kenmore Police Chief			January 24, 2011
DEPARTMENT	DIRECTOR	CONTACT PERSON	PHONE
Public Safety	Chief Clifford Sether	Chief Sether	206-205-7656
COST OF PROPOSAL: Legal & Management time to prepare ordinance.		ACCOUNT NUMBER: N/A	
AMOUNT BUDGETED: Included as part of general administrative costs.		NAME AND FUND #: N/A	
ATTACHMENT(S) TO AGENDA PACKET ITEM: Proposed Ordinance.			
SUMMARY STATEMENT: Kenmore Municipal Code Section 9.50.030, relating to the definition of the crime of prostitution, is amended to adopt the Revised Code of Washinton (RCW) definition of "Sexual Contact." The wording in the original Kenmore Ordinance was deficient and made it difficult to arrest and prosecute anyone for violation of prostitution by sexual contact. This brings the City Ordinance consistent with the RCW and is on the advice of the City's Prosecutor and King County Police Services.			
CONSISTENT WITH OR COMPARISON TO PAST COUNCIL POLICIES, ORDINANCES, DIRECTION: Maintaining consistency with best practices.			
RECOMMENDED CITY COUNCIL ACTION/SUGGESTED MOTION: Discuss and adopt Ordinance No. 11-0320.			
REVIEWED BY FINANCE DIRECTOR:	REVIEWED BY CITY ATTORNEY:	APPROVED BY CITY MANAGER:	
			
TODAY'S DATE:	REVISION DATE(S):	FILE NAME & PATH (HYPERLINK):	

IXC. Discussion and Adoption of Ordinance No. 11-0320 Amending Section 9.50.030 of the Kenmore Municipal Code Relating to the Definition of the Crime of Prostitution, and Providing for an

CITY OF KENMORE
WASHINGTON
ORDINANCE NO. 11-0320

AN ORDINANCE OF THE CITY OF KENMORE,
WASHINGTON, AMENDING SECTION 9.50.030 OF THE
KENMORE MUNICIPAL CODE RELATING TO THE
DEFINITION OF THE CRIME OF PROSTITUTION, AND
PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City is a community known for its wholesome civic and recreational activities and its traditional family oriented lifestyle; and

WHEREAS, it is in the public interest to maintain the health, safety, and welfare of the citizens of the City; and

WHEREAS, the City Council finds that amendments to the definition of the crime of prostitution in the Kenmore Municipal Code are necessary in order to protect the public health, safety, and welfare; and

WHEREAS, the revisions to KMC 9.50.030 are necessary and appropriate in order to provide consistency between the Kenmore Municipal Code and state law relating to the crime of prostitution, now, therefore

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENMORE,
WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 9.50.030 of the Kenmore Municipal Code is hereby amended to read as follows:

9.50.030 Prostitution defined – Sexual conduct ~~activity~~ defined.

For the purpose of this chapter, the terms “prostitution” and “sexual conduct” means engaging for hire in sexual activity, and “sexual activity” means: shall have the same meanings as provided in RCW 9A.88.030 and RCW 9A.44.010 which are adopted by reference.

~~A. Sexual intercourse within its ordinary meaning, occurring upon any penetration, however slight; and~~

~~B. Any penetration of the vagina or anus, however slight, by an object when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes; and~~

~~C. Any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex; and~~

~~D. Masturbation, manual or instrumental, of one person by another. [Ord. 01-0101 § 54(1) (KCC 12.63.030).]~~

Section 2. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE ____ DAY OF _____, 2011.

CITY OF KENMORE

David Baker, Mayor

ATTEST/AUTHENTICATED:

Lynn Suskin, City Clerk

Approved as to form:

Rod P. Kaseguma, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.:
Date of Publication:
Effective Date:

I:\City Clerk\Ordinances\2010\Ord No. 10-0_____