

ORDINANCE NO. 501

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON APPROVING THE FIRST AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH UPTOWN CENTER DEVELOPMENT, LLC, AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AMENDMENT SUBSTANTIALLY IN THE FORM ATTACHED, ENTERING THE ORDINANCE INTO THE PUBLIC RECORD, AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL OTHER DOCUMENTS AND APPROVALS NECESSARY TO ACCOMPLISH THE TERMS AND CONDITIONS SET FORTH IN THE AMENDMENT

WHEREAS, on May 17, 2007, the City Council approved the Disposition and Development Agreement ("DDA") with UPTown Center Development, LLC (the "Developer"), subject to a five-day period in which changes could be made to the Agreement; and

WHEREAS, on May 25, 2007, City Manager Bob Jean executed the revised DDA and thereafter Developer executed the same with an agreed effective date of May 18, 2007; and

WHEREAS, the City and the Developer have continued discussions and negotiations regarding the DDA, and have prepared a proposed First Amendment to the Disposition and Development Agreement; and

WHEREAS, the City wishes to amend and modify the Disposition and Development Agreement with the Developer by this First Amendment for the development of surplus City property into a high quality, pedestrian oriented, mixed-use development project with retail, civic, office, residential, and entertainment uses.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1. Findings Adopted.** The City Council hereby adopts the following Findings of Fact:

- a. The City has adopted Ordinance No. 496, approving the Disposition and Development Agreement ("DDA") with UPTown Center Development, LLC (the "Developer").
- b. Negotiations between the City and the Developer have continued subsequent to the adoption of Ordinance No. 496, and are culminated in that certain First Amendment to the DDA.
- c. A public hearing was held on the attached First Amendment to Disposition and Development Agreement on June 25, 2007.

**Section 2. Approve First Amendment to Disposition and Development Agreement with UPTown Center Development, LLC.** The First Amendment to the Disposition and Development Agreement with UPTown Center Development (the "Agreement") is hereby approved substantially in the form presented to Council on June 25, 2007, and attached hereto as Exhibit A.

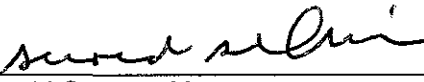
**Section 3. Entry into Public Record.** This Ordinance is hereby immediately entered into the public record upon passage by the City Council.

**Section 4. Authorize the City Manager to Execute the Agreement.** The City Manager is hereby authorized to execute the Agreement substantially in the form attached.


**Section 5. Authorize the City Manager to Execute Other Documents.** The City Manager is authorized to execute all other documents necessary to accomplish the terms and conditions set forth in the Amendment.

**Section 6. Effective Date.** 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 ON JUNE 25, 2007.**

  
\_\_\_\_\_  
Gerald Gehring, Mayor

**ATTEST:**

 DEPUTY CITY CLERK  
FOR Sarah Ortiz, CMC, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Janean Parker, City Attorney

Published: 06/27/07  
Effective Date: 07/02/07

**EXHIBIT A**  
**FIRST AMENDMENT**

**TO**

**DISPOSITION AND DEVELOPMENT AGREEMENT**

This First Amendment (“Amendment”) is entered into this \_\_\_\_ day of June, 2007 (“Effective Date”) by and between the City of University Place, a Washington municipal corporation (“City”) and UpTown Center Development LLC, a New York limited liability company (“Developer”), for the purpose of modifying and amending that certain Disposition and Development Agreement, dated May 18, 2007, which was passed by City Council on May 17, 2007 pursuant to Ordinance No. 496, and thereafter amended with administrative and technical changes by the parties on May 25, 2007, and thereafter subsequently ratified and approved by the City Council pursuant to Council Bill No. 9C on June 4, 2007 (collectively, the “Agreement”), with respect to that certain real property legally described in Exhibit A of the Agreement, which was defined therein as the “Town Center Property.” (City and Developer are herein collectively referred to as the “Parties”). A copy of the location of the Town Center Property was shown in the Binding Site Plan, which was attached as Exhibit B to the Agreement (Exhibits A and B, respectively, of the Agreement, are collectively incorporated herein and made a part hereof by this reference).

WHEREAS Developer and City have set forth certain understandings related to the disposition and development of the Town Center Property in the Agreement; and

WHEREAS the Parties now desire to amend and modify the Agreement to: (i) ratify and confirm certain understandings of the Parties’ which were inadvertently not included in the Agreement prior to June 4, 2007; (ii) extend the period of time in which Developer is vested with certain Development rights described in the Agreement; and (iii) make certain minor formatting and other similar edits to the Agreement to provide for easier reading and/or further clarification of the Parties’ intent.

NOW, THEREFORE, in consideration of the mutual covenants of the Parties set forth in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to amend and modify the Agreement as follows:

1. Section 2.1 is amended to strike the following from the second line: “and prior to August 31, 2010.”
2. Section 2.4 is amended to delete the repeated punctuation mark at the end of the first word in the tenth (10<sup>th</sup>) line.
3. Section 2.4(h) is amended as follows:
  - a. The word “and” shall replace the word “since” in the second line at the top of page 9;
  - b. The word “space” is capitalized in lines 6 and 7, respectively, of the first paragraph on page 9;
  - c. The 13<sup>th</sup> through the 16<sup>th</sup> lines on page 9 shall be amended to read as follows: “...(the ‘City Hall Space’), and approximately half of an approximate 4,000 square foot area

(the “Enclosed Square”) of indoor space centered on Market Square (half of the Enclosed Square will be for private use and half will be for public use (ingress and egress to the Transit Stalls, City Hall Space, and other Civic Components). In addition, subject to the City entering into a...”

- d. The 17<sup>th</sup> line on page 9 shall be amended to include the word “reasonably” before the word “satisfactory.”
4. Section 3.3(a) is amended to delete the “s” at the end of the word “Ordinance” in line 12.
5. Section 3.3(c) is amended to delete the words, “a date which is twelve (12) months beyond the Option Expiration Date, and to replace such words with, “December 31, 2017.”
6. Section 3.3(d) is amended to delete the words, “In addition,” and to replace such words with, “Through and until December 17, 2017, the Parties understand and agree that...”.
7. Section 3.3(e) is amended by moving the last sentence of Section 3.3(e) up to the end of Section 3.3(d). Further, the word, “again” is deleted from the last sentence of 3.3(e) which appeared before the word, “subject”.
8. Section 3.4.1(a) is amended by deleting from the second to last sentence, the words “...would otherwise create an unnecessary hardship...” and adding the words, “...and without the reduction, Developer would face unnecessary hardship.” to the end of the same sentence.
9. Section 3.4.3 is amended to include between the words, “Lot 13” and “and Bridgeport” the following: “..., 35<sup>th</sup> and Bridgeport Way on Lot 11, ...”.
10. Section 3.6(a) is stricken in its entirety and amended to read as follows:

“(a) As of the date of this Agreement and through and until December 31, 2017, Developer is assured, and the City agrees, that Developer shall be fully vested in all of the development rights for the Project described in this Agreement, including but not limited to those rights established in the land use and design review criteria for the Developer’s Intended Project which are set forth in Section 3 of this Agreement and all of its subparts. None of the development rights described in this Agreement may be changed or modified hereafter, except as may be necessary by the City for the protection of a serious threat to public health or safety or as may be mutually agreed upon in writing by the Parties. The development rights described in this Agreement shall further continue through the life of any building permit for which a complete application is made during the vesting period described above, including any extensions, and through any additional period added as a result of Unavoidable Delay (described in Section 5.3).”
11. The first sentence of Section 3.6(b) is amended to read as follows:

“(b) As of the date of this Agreement and through and until December 31, 2017, Developer is assured, and the City agrees, that Developer is fully vested with the right to have the Project reviewed, and

to develop the Property, and every part of the Property, in accordance with the Design Review Documents in effect at the execution of this Agreement.”

12. A new sentence shall be added to the end of Section 3.6(b) which reads as follows: “The rights described in this paragraph shall further continue through the life of any building permit for which a complete application is made during the vesting period described above, including any extensions, and through any additional period added as a result of Unavoidable Delay (described in Section 5.3).”

13. Section 5.2.1(b) shall be amended in the second to last line to include the word “to” before the word “Unavoidable.”

14. Section 7.2(e) is amended to read as follows: “Representations. The material representations and warranties of the City set forth in this Agreement are true and correct on and as of the Closing Date of the Phase I Property.”

15. Section 7.3(h) is amended to read as follows: “Representations. The material representations and warranties of the Developer set forth in this Agreement are true and correct on and as of the Closing Date of the Phase I Property.”

16. The references to “2,000 square feet” in Sections 8.1(b), (e), (g) and (i), respectively, shall be replaced with the word “half.”

17. Intentionally Omitted.

18. Section 8.1(j) shall be amended to add a new sentence just before the second to last sentence of the paragraph, which shall read as follows: “The Condominium C Declaration shall also contain a provision that will prevent any parking restrictions being implemented that would be different from those described in Section 14 of this Agreement (and the Master Covenants when recorded) for the parking stalls subject to and within Condominium C.”

19. The second to last sentence of Section 8.1(j) shall be amended to read, “The cost of preparing the Condominium C Declaration and survey map and plans shall be the City’s sole cost.”

20. The second reference to Section 8.1(j) shall be changed to reference Section 8.1(k).

21. Reference to “(for the 2,000 square feet public portion thereof)” in the 8th line of Section 8.3 shall be changed to read as follows: “(for the public half of the Enclosed Square)”.

22. The reference to “Library expansion space” in the 11th line of Section 8.3 shall be changed to, “Library Expansion Space.”

23. The last sentence of the first paragraph of Section 8.3 shall be amended to add after the word “Building,” the following: “...it being understood that approximately half of the commercially viable portions of the Enclosed Square shall belong to Developer.”

24. Section 8.4(i) shall be amended to add after the words, “Closing Date” the following: “...of the Phase II Properties”.

25. Section 8.5(f) shall be amended to add after the words, “Closing Date” the following: “...of the Phase II Properties”.

26. Section 9.1(c) shall be amended to change the two respective references of “thirty (30) days,” to “forty-five (45) days.”

27. Section 9.2(h) shall be amended to read as follows: “Representations. The material representations and warranties of the City set forth in this Agreement are true and correct on and as of the Closing Date of the Phase III Properties.”

28. Section 9.3(f) shall be amended to delete the words “Section 19 of...”.

29. The introductory paragraph of Section 12.2 is amended to read as follows:

“12.2 Right of First Refusal on the Option Lots. In addition, City hereby grants Developer a right of first refusal to purchase any of the Option Lots not purchased by the Option Expiration Date (the “Right of First Refusal”) until December 31, 2017 (the “Right of First Refusal Expiration Date”). The terms of the Right of First Refusal shall be as follows:”

In addition, the order of Sections 12.2(iii) and (iv) are amended to appear in the reverse (i.e., Section 12.2(iii) becomes 12.2(iv) and Section 12.2(iv) becomes 12.2(iii)).

30. A new Section 12.2(iv)(a) shall be added to the agreement which reads as follows:

“(a) To the extent that the Developer does decline the offer and the City does then close on a sale of the Option Lot(s) to a person other than Developer pursuant to this Section 12.2, and provided that the City has so set forth in the executed purchase and sale agreement described in Section 12.2(ii) above, the vested rights of Developer set forth in Section 3 herein may be reduced by the City according to the following formula: the total number of square feet being sold in any Option Lot(s) to any third party purchaser, divided by the total square footage of the remaining Option Lots(s) not yet purchased by Developer, multiplied by the total number of peak hour trips remaining under the EIS that are vested in Developer and have not yet been or will not be utilized by Developer in connection with that which Developer: (i) has developed; (ii) is in the process of developing; or, (iii) has submitted a complete building permit application; provided however, in no event shall the Developer’s total vested peak hour trips under the EIS, as set forth in Section 3 of this Agreement be reduced under this formula in these circumstances by more than one (1) peak hour trip for every 326 square feet of land sold to a third-party purchaser of the remaining Option Lot(s).”

31. Section 12.3 shall become Section 12.4 of the Agreement.

32. A new Section 12.3 shall be added to the Agreement which reads as follows:

“12.3 Second Option to Purchase Option Lots. In lieu of and as an alternative to the Right of First Refusal granted in Section 12.2, the Developer may choose, instead, to exercise a Second Option to purchase any of the Option Lots not purchased by the Option Expiration Date up until August 31, 2017 (“Second Option Expiration Date”) subject to the following conditions:

a. The purchase price for any Option Lots under the Second Option up until the Second Option Expiration Date shall be the fair market value, except for Lots 11 and 12, which shall be for the purchase price set forth in Exhibit J;

b. The accrued tax and lease revenue generated by or for the City from the Town Center Property, excluding only revenue generated by or for the City from the sale of any City owned interest in the Town Center Property equals or exceeds \$1,400,000 for the most current 12 month period as can reasonably be determined by the Parties prior to the Option Expiration Date; and,

c. All Option Lots purchased under the Second Option up until the Second Option Expiration Date shall be closed subject to all preconditions set forth in Sections 10.3 (c) through (f), and 10.4 (c) and (f), and the condition that at the time the Second Option is exercised and at the time of Closing of any such Option Lot(s) purchased pursuant to the Section Option, there is not then existing an Event of Default caused by the action or inaction of Developer.”

33. Section 14 is amended as follows:

a. Section 14(a) shall be amended to read as follows: “The Master Covenants shall set forth a definition for Common Areas that shall consist of the components of the City’s Minimum Commitment as constructed by July 31, 2009.”

b. The second sentence of Section 14(b)(i) shall be amended to read as follows: “The elevators that run above the Market Street level shall be deemed to be eighty percent (80%) Common Area and twenty percent (20%) shall be for the second floor and above uses.”

c. In Section 14(b)(ii)(d) after the words, “Lot 7 Garage” but before the words, “...which shall be the City’s sole cost and responsibility; and,” shall be added the following: “...or any other component of the City’s Minimum Commitment...”.

d. Intentionally Omitted.

e. A new Section 14(b)(ii)(f) shall be added which reads as follows: “all costs associated with the Transit Stalls and the City Employee Parking (which shall be paid for entirely at the expense of the City) and any other privately-owned parking stalls (which shall be paid for entirely by the respective owner).”

f. The following shall be deleted from Section 14(c)(ii): “...based on the square footage area of a unit divided by the aggregate square footage of all the Units in said Condominium(s) on said Lot(s)...” and replaced with the following: “...in accordance with the allocated interests formula

described in the condominium declaration, provided that the Civic Components of the Phase II Building shall be treated the same way that Retail space is treated and shall not have to pay a greater share of the Common Expenses based on square footage.”

g. The following shall be deleted from Section 14(c)(iii): “...based on the total square footage of all the units in each condominium to the total square footage of the Lot...”, and replaced with the following: “...to distribute to the owners of units in each respective condominium in accordance with the allocated interests formula described in each respective condominium declaration.”

h. Section 14(d) shall be amended to delete the second and third sentences, respectively.

i. Section 14(e)(i) shall be amended to change the word, “Friday” to “Sunday.”

j. Section 14(e)(iii) shall be amended to change the word “may” to “shall.” Further, a new sentence shall be added at the end of Section 14(e)(iii), which reads as follows: “The Transit Stalls shall also be available for the public to use to the extent that they are unoccupied by such carpool and park and ride transit users after 10:00 AM.”

k. The first sentence of Section 14(e)(v) shall be amended to read as follows: “The Master Covenant shall provide for the creation of an Association who shall have the perpetual and exclusive right to establish or alter rules and regulations related to parking, including but not limited to time restrictions, and shall have the power to enforce the same.”

l. The last two lines of the last sentence of Section 14(f)(ii) shall be amended to read as follows: “...Town Center Property (except for Lot 2, which may be excluded from the Master Covenants in Developer’s sole discretion).”

34. Section 17.5 is amended to replace the word “or” with “of”.

35. Section 20.2 is amended to include at the end of the paragraph, the following insertion after the word “Property”: “..., except as provided in Section 18.4.”

36. Section 23 is amended in the fourth line to delete the reference to the words “the Option” and replace the same with “...twelve (12) months following the Right of First Refusal...”.

37. Intentionally Omitted.

38. Section 33.3 is amended to read as follows: “Developer shall not voluntarily or involuntarily sell, transfer, convey, assign or otherwise dispose of its rights under this Agreement, in whole or in part, without the prior written consent of City, except that Developer may assign its rights under this Agreement to a lender solely in connection with the construction of the Project or the purchase of any portion of the Town Center Property, and may pledge or mortgage any portion of the Town Center Property for the benefit of Developer’s lender.”

39. Section 33.4(b), subparts (b) and (c) are amended, respectively to include the following between the words “constructed,” and “is”: “and necessary to meet the requirements of the Developer’s Minimum Commitment,”.

40. Section 35.11 is amended to delete “With a copy” and replace it with “and” before the words “to: Rosenbaum...”



41. Section 35.22 is stricken in its entirety and replaced with the following:

“(a) All of the following Sections and all of their subparts in this Agreement shall survive any expiration or earlier termination of this Agreement and any Closing, settlement or other similar event which occurs under this Agreement: 3, 4, 12, 14, 19.3, 23, 29.2 and 33, and Section 27, except that Section 27 shall only survive for a period of one (1) year following the date that the construction to which the claim pertains was substantially completed, or the claim arose, whichever is later.

(b) Except as expressly provided herein, all other title related covenants, representations and warranties shall merge into the applicable deed of conveyance and shall not survive such closing as they relate to that Lot, Space, or Building closing.

(c) Except as expressly provided herein, all other representations, warranties, covenants, and agreements contained in this Agreement shall survive closing or other termination of this Agreement provided that such survival shall terminate at a date which is twelve (12) months beyond that date when all of Developer’s rights under Section 12 herein have been exhausted.”

42. Section 35.27 is amended to include the word “holidays” following the word “Jewish” in the third line; and the words “Jewish holiday” shall be inserted following the word “Sunday” and before the word “or” in the fourth line.

Except as expressly set forth in this Amendment, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. The provisions of the Agreement not modified by this Amendment are hereby ratified and confirmed by the Parties hereto in all respects. In the event of any conflict in the terms of this Amendment and any prior document that is part of the Agreement, the terms of this Amendment shall control.

IN WITNESS WHEREOF on the dates executed below; however, the Effective Date of this Amendment is that date first written above.

Developer:	City:
UpTown Center Development LLC, a New York limited liability company	City of University Place, a Washington municipal corporation
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that Aaron Lichtman 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 Managing Member of UPTOWN CENTER DEVELOPMENT LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
\_\_\_\_\_  
(Type/Print Name above)  
Notary Public in and for the  
State of \_\_\_\_\_, residing at \_\_\_\_\_.  
My appointment expires: \_\_\_\_\_.

STATE OF WASHINGTON )  
 ) ss.  
County of Pierce )

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

DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
\_\_\_\_\_  
(Type/Print Name above)  
Notary Public in and for the  
State of Washington, residing at \_\_\_\_\_.  
My appointment expires: \_\_\_\_\_.