



City of SeaTac Special Council Meeting Agenda

December 13, 2018
5:30 PM

City Hall
Council Chambers

The Special Council Meeting will commence at 5:30 p.m. The meeting will then immediately be recessed to an Executive Session until 6 p.m. The open public meeting portion will begin at 6 p.m.

CALL TO ORDER:

ROLL CALL:

EXECUTIVE SESSION: Potential Litigation RCW 42.30.110(1)(i)

PUBLIC COMMENTS related to Agenda Bill #5097: (Speakers must sign up prior to the meeting. Individual comments are limited to three minutes and a representative speaking for a group of four or more persons in attendance shall be limited to ten minutes. When recognized by the Mayor or his designee, walk to the podium, state and spell your name, and give your address [optional] for the record.)

ACTION ITEMS:

Agenda Bill #5097; A Resolution authorizing the City Manager to sign a Purchase and Sales Agreement with CAP Acquisitions, LLC for the sale of properties located in the South 154th Street Station Area and declaring this property surplus to the needs of the City. (Total Time: 20 Minutes / Presentation Time: 5 Minutes)

By: Community & Economic Development Director Steve Pilcher

ADJOURN:

THE COUNCIL CHAMBERS IS ACCESSIBLE TO PERSONS WITH DISABILITIES AND IS EQUIPPED WITH ASSISTIVE LISTENING DEVICES. PERSONS REQUIRING SPECIAL ACCOMMODATIONS SHOULD CONTACT THE CITY CLERK'S OFFICE BEFORE 5:00 PM THE FRIDAY PRECEDING THE COUNCIL MEETING.



SeaTac City Council

Request for Council Action

Agenda Bill #: 5097

Council consideration: A Resolution authorizing the City Manager to sign a Purchase and Sales Agreement with CAP Acquisitions, LLC for the sale of properties located in the South 154th Street Station Area and declaring this property surplus to the needs of the City.

Date Action Requested: SCM: 12/13/18

Review Dates: PED: 12/03/18

Prepared By: Steve Pilcher, Community & Economic Development Director

Amount: \$15,480,000.00 (Revenue)

Budgeted?: No

Applicable Fund Name: Port of Seattle ILA Fund (#105)

Director Approval: CED Director Steve Pilcher 11/30/18

City Manager Approval: City Manager Joseph Scorcio

Purpose: The proposed Resolution will authorize the City Manager to sign a Purchase and Sales Agreement with CAP Acquisitions, LLC (AKA Inland Group) for purchase of City of SeaTac properties located in the vicinity of S. 154th St. and International Blvd, including the SeaTac Center.

ANALYSIS: **CAP Acquisitions LLC is a legal entity created by Inland Group for the purpose of development of these properties. This is typical in commercial real estate transactions. For ease of reference, CAP Acquisitions LLC will be referred to as Inland Group in this agenda bill.**

The City owns several parcels of real property in the South 154th Street Station Area. These properties have generally been referred to as the SeaTac Center (acquired in 2009), the Triangle Property (acquired in 2018), and a residential parcel (acquired in 2008). The City has contemplated numerous studies of the properties over the years regarding future use, improved S. 154th St., and next year will begin improvements to Military Rd. and S.152nd St.

After discussion, the City Council authorized the issuance of a Request for Proposals (RFP) to solicit interest from the development community for the purchase and subsequent redevelopment of these properties. The RFP was issued on June 25, 2018 and two submittals were received on August 31, 2018. A review of the RFP's was conducted by the Council and on September 25, 2018, the proposal by the Inland Group was selected and the City Manager was directed to engage in negotiations for the sale of these properties. Inland Group's proposal was to purchase the properties for \$15,480,000 for redevelopment into 665 multifamily units and approximately 30,000 sq. ft. of commercial space.

After numerous negotiation sessions, a proposed purchase and and sales agreement (PSA) with Inland

Group is presented to the City Council for consideration. The PSA currently contains the following key elements:

- The purchase price will be \$73.88 per square foot. This is equivalent to the value stated in the RFP (\$15,480,000 for 4.81 acres).
- Inland will deposit \$150,000 of Earnest Money into escrow within three days of execution of the PSA.
- Inland will have a 90-day Feasibility Contingency period to inspect the property and review due diligence materials provided by the City. During this period, the Parties will develop a draft clean-up plan to address environmental contamination on the Property. Inland would be responsible for conducting the remediation at the City's cost. Cost estimates will be developed during the Feasibility Contingency period.
- Inland will have a 60-day Financing Contingency period. Upon waiving this contingency, Inland will deposit another \$150,000 into escrow as additional earnest money that will be non-refundable unless the City breaches the agreement.
- The City and Inland will negotiate a Development Agreement that will cover items such as a development plan (which would include more specific details about the development), timelines related to development, a right for the City to repurchase if the timelines are not met, and a right of first refusal if Inland seeks to sell the properties prior to commencing construction. This must be agreed to prior to the expiration of the Financing Contingency unless otherwise agreed upon by the parties.
- Inland can terminate the PSA and receive their earnest money back through the end of the Financing Contingency. Upon waiver of the Financing Contingency, the Earnest Money is non-refundable unless the City breaches the agreement. The Earnest Money would be applied to the purchase price.
- Closing will occur within 150 days of waiver of the Financing Contingency. However, this time period can be extended up to four months by Inland upon payment of additional money into escrow. This money would also be non-refundable and would apply towards the purchase price.

Based on the deadlines set forth in the agreement, the sale would close in the Fall, 2019.

This Resolution authorizes the City Manager to execute a Purchase and Sale Agreement with CAP Acquisitions LLC, in substantially similar form as attached, for the sale of the properties. In addition, the Resolution also declares these properties surplus to the needs of the City.

BUDGET SIGNIFICANCE: All revenue, which is currently estimated at \$15,480,000, will be recorded into the Port ILA Fund (#105).

COMMITTEE REVIEW(S) AND RECOMMENDATION(S): The proposed Purchase and Sales Agreement was reviewed by the Planning & Economic Development Committee at its December 3, 2018 Special Meeting. The Committee recommended approval (split vote 2-1).

ALTERNATIVE(S): Do not pass the Resolution and provide additional direction to the City Manager.

ATTACHMENTS: Proposed Resolution
 Exhibit A - Draft Purchase and Sale Agreement

RESOLUTION NO. _____

A RESOLUTION of the City Council of the City of SeaTac, Washington declaring real property located at 15221 – 15245 International Blvd. S. and 3261 S. 152nd St. as surplus to the needs of the City, and authorizing the City Manager to execute a purchase and sale agreement with the CAP Acquisitions, LLC (Inland Group), for its disposal.

WHEREAS, the City owns certain real property located at 15221 – 15245 International Blvd. S. and 3261 S. 152nd St (King County parcel numbers 004300-00132, 004300-0015, 004300-0018, 004300-0019, 004300-0093), which is also referred to as the SeaTac Center properties; and

WHEREAS, the City Council has determined that it has no current or future need for the property, and the property is surplus to the City’s needs; and

WHEREAS, the City received an offer for the property of \$73.88/sq. ft. for the purpose of developing the property with approximately 665 units of workforce and market-rate housing and approximately 30,000 sq. ft. of commercial space; and

WHEREAS, the City Council desires to sell the property to CAP Acquisitions, LLC, pursuant to a purchase and sale agreement; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON HEREBY RESOLVES as follows:

1. The City Council hereby declares the City-owned real property located at 15221 – 15245 International Blvd. S. and 3261 S. 152nd St (King County parcel numbers 004300-00132, 004300-0015, 004300-0018, 004300-0019, 004300-0093), surplus to the needs of the City.
2. The City Manager is authorized to execute a purchase and sale agreement with the CAP Acquisitions, LLC, in substantially similar form as attached hereto as Exhibit A.
3. The City Manager is authorized to execute any additional documents necessary to effectuate the sale.

PASSED this _____ day of _____, 2018 and signed in authentication thereof on this _____ day of _____, 2018.

CITY OF SEATAC

Erin Sitterley, Mayor

ATTEST:

Kristina Gregg, City Clerk

Approved as to Form:

Mary E. Mirante Bartolo, City Attorney

[Sale of SeaTac Center properties]

(DRAFT) PURCHASE AND SALE AGREEMENT

DATE: _____, 2018

SELLER: City of SeaTac,
a Washington municipal corporation
Address: 4800 South 188th Street
SeaTac, WA 98188
Attention: City Manager
Telephone: (206) 973-4381
Email: jscorcio@seatacwa.gov

With copies to:

City of SeaTac
Address: 4800 South 188th Street
SeaTac, WA 98188
Attention: City Attorney
Telephone: (206) 973-4631
Email: mmbartolo@seatacwa.gov

and

Alston, Courtnage & Bassetti LLP
Address: 1420 Fifth Avenue, Suite 3650
Seattle, WA 98101-4011
Attention: Andrew B. Bassetti
Telephone: (206) 623-7600
Email: abasse@alcourt.com

BUYER: CAP Acquisitions, LLC,
a Washington limited liability company
Address: 120 W. Cataldo Ave., Suite 100
Spokane, Washington 99201
Attention: Scott Morris
Telephone: (509) 321-3201
Email: scottm@inlandconstruction.com

ESCROW AGENT: Chicago Title of Washington
Address: 701- 5th Avenue, 23rd Floor
Seattle, WA 98104
Escrow Officer: Mike Costello
Telephone: (206) 628-5619
Facsimile: (206) 628-9737
Email: Michael.Costello@ctt.com

PROPERTY: Real property located in the City of SeaTac, State of Washington, consisting of all or portions of King County Assessor's parcel numbers 0043000013, 0043000015, 0043000018, 0043000019, 0043000093, 0043000100 estimated to be approximately 4.5 +/- acres (hereinafter collectively the "**Property**" -- the legal description and a map of which is attached hereto as Exhibit A). During the Feasibility Contingency Period, Buyer shall survey and define/describe the Property that Buyer desires to purchase, which shall be subject to Seller's approval. Upon Buyer's and Seller's mutual agreement as to the Property, this Agreement shall be amended prior to the expiration of the Feasibility Contingency Period to reflect the exact legal description of the Property (as well as the exact Purchase Price, in accordance with Article 2.1 below). Prior to Closing, the Property shall be segregated and consolidated through a lot consolidation, boundary line adjustment and/or short plat (or similar process) that shall be processed by Buyer, but with Seller's cooperation, so that the Property may be conveyed at Closing in accordance with this Agreement. The Property shall also include all improvements, rights and privileges appurtenant to the Property, all of which are agreed to be and constitute a part of the Property.

EXHIBITS: Exhibit A – Legal Description of Property
Exhibit B – List of Due Diligence Materials

ARTICLE 1 AGREEMENT OF THE PARTIES

1.1 Agreement. In consideration of the mutual promises and covenants set forth in this Agreement, Seller agrees to sell and Buyer agrees to buy the Property on the terms and conditions set forth in this Agreement.

1.2 Effectiveness of Agreement; Opening Date. This Agreement shall be effective when both Buyer and Seller have executed this Agreement. The "**Opening Date**" shall be the date on which Escrow Agent receives a fully executed copy of this Agreement and the earnest money deposit required by **Section 2.2(a)**. Promptly upon receipt of those items, Escrow Agent shall notify Buyer and Seller in writing of the Opening Date.

ARTICLE 2 PURCHASE PRICE AND PAYMENT TERMS

2.1 Purchase Price. The total purchase price for the Property is Seventy-Three and 88/100 Dollars (\$73.88) per square foot of Property (the "**Purchase Price**").

2.2 Payment. The Purchase Price shall be paid by Buyer as follows:

(a) Initial Earnest Money. Within three (3) days following the date of execution of this Agreement by both Buyer and Seller, Buyer agrees to deposit in escrow the sum of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) as an earnest money deposit (the "**Earnest Money**").

(b) Cash Payment at Closing. On or before the Closing, Buyer agrees to deposit in escrow the balance of the Purchase Price by wire transfer of immediately available funds to the account of Escrow Agent.

2.3 Earnest Money Provisions.

(a) Manner of Payment; Deposit. The earnest money deposit required by this Agreement shall be made by cashier's check payable to Escrow Agent or by wire transfer of ready funds to the account of Escrow Agent. Escrow Agent is instructed to deposit such payment in a federally-insured money market or other similar account, subject to immediate withdrawal, at a bank or savings and loan institution.

(b) Interest. Interest earned on the earnest money deposit shall be retained in the escrow until the Closing, at which time such interest shall be applied to and included as part of the payment of the Purchase Price; *provided, however*, that if this Agreement is cancelled, the interest shall be paid to the party entitled to receive the earnest money.

(c) Disposition of Earnest Money.

(i) If the escrow closes, all Earnest Money shall be credited against the Purchase Price.

(ii) If the Agreement is cancelled and, pursuant to the terms of this Agreement, Seller becomes entitled to receive and retain the Earnest Money, Escrow Agent shall immediately pay to Seller all Earnest Money deposits then in escrow.

(iii) If the Agreement is cancelled and, pursuant to the terms of this Agreement, Buyer becomes entitled to a return of the Earnest Money, Escrow Agent shall immediately refund to Buyer all Earnest Money deposits then in escrow.

(d) Non-Refundable Nature of Earnest Money. Following the expiration of the Financing Contingency Period, the Earnest Money shall be non-refundable, except as otherwise expressly provided in this Agreement.

2.4 Disbursements. At Closing, all amounts paid by Buyer on account of the Purchase Price, less any closing costs payable by Seller, shall be disbursed to Seller.

ARTICLE 3 ESCROW

3.1 Establishment of Escrow; Escrow Instructions. Immediately upon execution of this Agreement by both parties, Buyer will deliver a fully executed copy of this Agreement to Escrow Agent. An escrow for this transaction shall be established with Escrow Agent, and Escrow Agent is engaged to administer the escrow. This Agreement constitutes escrow instructions to Escrow Agent. Should Escrow Agent require the execution of additional escrow instructions, Buyer and Seller agree to execute same; however, such instructions shall be construed as applying only to Escrow Agent's engagement, and if there are conflicts between the terms of this Agreement and the terms of such additional escrow instructions, the terms of this Agreement shall control.

3.2 Acceptance; Escrow Agent Not a Party. By accepting this escrow, Escrow Agent agrees be bound by the terms of this Agreement as they relate to the duties of Escrow Agent. However, such agreement does not constitute Escrow Agent as a party to this Agreement and no consent or approval from Escrow Agent shall be required to amend, extend, supplement, cancel or otherwise modify this Agreement except to the extent any such action increases the duties of Escrow Agent or exposes Escrow Agent to increased liability, in which such action shall not be binding on Escrow Agent unless Escrow Agent has consented to the same in writing.

3.3 Cancellation Charges. If the escrow fails to close because of Seller's default, Seller shall be liable for all customary escrow cancellation charges. If the escrow fails to close because of Buyer's default, or because Buyer elects to terminate this Agreement for reasons other than a default by Seller, Buyer shall be liable for all customary escrow cancellation charges. If the escrow fails to close for any other reason, Seller and Buyer shall each be liable for one-half of all customary escrow cancellation charges.

3.4 IRS Reporting. Escrow Agent agrees to be the designated "reporting person" under §6045(e) of the U.S. Internal Revenue Code of 1986 as amended (the "**Code**") with respect to the real estate transaction described in this Agreement and to prepare, file and deliver such information, returns and statements as the U.S. Treasury Department may require by regulations or forms in connection with such requirements, including Form 1099-B.

3.5 Insured Closing Letter. If Escrow Agent does not issue its own title insurance policies, but acts as an agent for an underwriter, as a condition to Escrow Agent acting as such, Escrow Agent shall cause its underwriter to issue to the parties a closing protection letter or insured closing service in written form satisfactory to Buyer, within five (5) days following the Opening Date.

ARTICLE 4

INFORMATION TO BE PROVIDED TO BUYER

4.1 Information and Other Items to Be Provided to Buyer. Within the time periods set forth below, Seller will provide Buyer with the following (the "**Due Diligence Materials**"):

(a) Survey. Within five (5) business days following the Opening Date, Seller shall delivery to Buyer a copy of Seller's existing ALTA/ACSM survey of the Property (the "**Survey**"). The Survey shows all easements, encroachments, and other matters affecting the Property. Buyer may cause, at its expense, the Survey to be updated and certified to be accurate, complete and correct to Buyer, Seller and Escrow Agent.

(b) Title Report. As soon as commercially reasonable following the Opening Date, a current preliminary title report or commitment for title insurance (the "**Title Report**") on the Property prepared by Escrow Agent. The Title Report will show the status of title to the Property as of the date of the Title Report and will be accompanied by legible copies of all documents referred to in the Title Report (which may be provided by hyperlinks in the Title Report) to the extent legible copies are available.

(c) Studies and Reports. Within five (5) business days following the Opening Date, copies of the reports and other information listed on Exhibit B attached.

(d) Commercial Leases. Within five (5) business days following the Opening Date, copies of all leases, occupancy agreements, or other agreements by which third parties have an interest in or right to use the Property (the "**Commercial Leases**").

Buyer further acknowledges that some of the Due Diligence Materials may have been prepared by third parties and may have been prepared prior to Seller's ownership of the Property, and other than the representations and warranties expressly made by Seller in this Agreement or any document delivered by Seller at Closing, Seller has not made and does not make any other representation or warranty regarding the truth, accuracy or completeness of the Due Diligence Materials.

4.2 Retention or Return of Information. If this Agreement is cancelled or terminated for any reason whatsoever, all of the Due Diligence Materials will be returned to Seller; otherwise, Buyer may retain such Due Diligence Materials. In the event this Agreement and the escrow are terminated by Buyer or as a result of a Buyer default, Buyer shall promptly assign to Seller, and provide to Seller without charge, copies of all third-party due diligence studies, reports, test results, engineering materials, surveys, maps, plats, and other materials prepared by or on behalf of Buyer with respect to the physical condition, zoning or entitlement status of the Property, and Buyer shall assign to Seller any applications for rezoning, plat approval or other entitlements for the Property.

4.3 Right to Enter and Inspect the Property. During the period from the date of execution of this Agreement by Buyer and Seller until the earlier of the Closing or cancellation of this Agreement, Seller grants Buyer the non-exclusive right and license for Buyer and Buyer's representatives, agents, and contractors to enter upon the Property for the purposes of investigating and inspecting the Property and performing tests, studies and analyses with respect to the Property, subject to the rights of tenants of the Property. However, Buyer may not enter the Property without giving Seller advance written notice of what tests, studies or analyses Buyer intends to have performed and when and where such tests, studies or analyses will be performed. Seller shall have the right to have a representative present for all such activities. In addition to the foregoing, prior to entering the Property, Buyer shall have in effect, at all times when Buyer is authorized to come on the Property, commercial general liability insurance in a minimum amount of at least \$2,000,000, combined single limit per occurrence, insuring Buyer against claims for personal injury, death, and property damage or destruction, and naming Seller as a primary, non-contributing additional insured. Buyer agrees to indemnify, defend, and hold harmless Seller and its Related Parties for, from, and against any and all Claims arising out of Buyer's exercise of the rights granted by this Section, including, without limitation, any Claims relating to mechanics' or materialmen's liens. If this Agreement is cancelled by either Buyer or Seller, Buyer agrees, at its expense, to promptly refill holes dug and otherwise to repair any damage to the Property as a result of its activities pursuant to this Section. With respect to any inspection or investigation that will require excavations, borings or drilling, or any other invasive activities on the Property (generally, "**Invasive Testing**"), Buyer shall submit to Seller a written plan describing such Invasive Testing in reasonable detail (an "**Invasive Testing Plan**") for Seller's written approval, such approval not to be unreasonably withheld. Buyer may not proceed with any Invasive Testing unless Seller has expressly approved in writing the Invasive Testing Plan, and Buyer shall conduct all Invasive Testing in compliance with the Invasive Testing Plan approved by Seller. Seller shall have the right to have a representative of Seller observe any testing activities and to request and receive split samples of any materials collected for analysis by or for Buyer. Buyer shall restore the

Property to substantially its condition immediately prior to any Invasive Testing promptly after the Invasive Testing is completed, but not later than five (5) days after any disturbance or damage occurs. In entering upon the Property, conducting inspections, and communicating with tenants, Buyer and its representatives will not: (i) disturb the tenants or unreasonably interfere with their use of the Property; (ii) interfere with the operation and maintenance of the Property; (iii) damage any part of the Property or any personal property owned or held by any tenant or any other person or entity; (iv) injure or otherwise cause bodily harm to Seller or any tenant, or any other person or entity; or (v) permit any liens to attach to the Property by reason of the exercise of Buyer's rights under this **Section 4.3**.

ARTICLE 5 CONDITIONS TO CLOSING

5.1 Conditions to Buyer's Obligation to Close. Buyer's obligations to close this transaction are subject to the satisfaction of the following conditions on and as of the Closing, unless an earlier date is specified:

(a) Title Review. Buyer is satisfied with the status of title to the Property as disclosed by the Title Report and the Survey. In that regard:

(i) Buyer shall have thirty (30) days (the "**Review Period**") following receipt of the Title Report in which to review and to give Seller and Escrow Agent written notice of any title exception which is unacceptable to Buyer ("**Buyer's Objection Notice**"), in Buyer's sole and absolute discretion (each such matter or exception, a "**Disapproved Matter**"). If, prior to Closing, Escrow Agent issues a supplemental or amended title report showing additional title exceptions (an "**Amended Title Report**"), Buyer shall have five (5) days from the date of receipt of the Amended Title Report and a copy each document referred to in the Amended Title Report in which to give notice of dissatisfaction as to any additional Disapproved Matters (a "**Supplemental Review Period**"). If Buyer does not object to an exception to title as disclosed by the Title Report or an Amended Title Report within the applicable time period, such matter or exception shall be deemed to have been approved by Buyer.

(ii) If Buyer timely notifies Seller and Escrow Agent of its Disapproved Matter(s), Seller shall, within ten (10) business days following Seller's receipt of Buyer's written notice of Disapproved Matter(s), notify Buyer and Escrow Agent in writing that: (A) Seller will remove or correct such Disapproved Exceptions as of or before the Closing; or (B) will not remove any or certain specified Disapproved Matter(s). If Seller does not respond within such period, Seller shall be deemed to have elected option (B) above.

(iii) If Seller notifies Buyer in writing that it is unable or unwilling to have the Disapproved Matter(s) removed or is otherwise unable to cure some or all of the Disapproved Matter(s) to Buyer's satisfaction, then prior to the expiration of the Feasibility Contingency Period, Buyer may elect either:

(A) To terminate this Agreement and receive all Earnest Money then in Escrow (and any interest earned thereon) and thereafter the parties shall have no further

rights or obligations under this Agreement except those rights which specifically survive termination; or

(B) to take title subject to the Disapproved Matter(s). If Buyer does not respond prior to the expiration of the Feasibility Contingency Period, Buyer shall be deemed to have elected this option (B).

(iv) Notwithstanding anything in this Agreement to the contrary, title to the Property shall be delivered to Buyer at the Closing free and clear of all monetary liens and encumbrances (other than the lien for current real property taxes not yet due and payable) voluntarily placed on the Property by Seller and such monetary liens and encumbrances shall be released from the Property by Seller at Seller's sole expense on or before the Closing. All such liens and encumbrances are disapproved for the purposes of this Section, and Buyer need not give any further notice of disapproval as to those items.

(v) The matters shown in the Title Report and any Amended Title Report (other than standard printed exceptions and exclusions that will be included in the title policy) that are approved or deemed approved by Buyer in accordance with this **Section 5.1(a)**, the Survey matters that are approved or deemed approved by Buyer, and any other matters approved by Buyer in writing, are referred to in this Agreement as the "**Approved Title Exceptions**".

(b) Buyer's Feasibility Contingency. For a period ending at five o'clock p.m. Pacific Time on the ninetieth (90th) day following the date that both Buyer and Seller have executed this Agreement (the "**Feasibility Contingency Period**"), Buyer will have the absolute right to cancel this Agreement for any reason whatsoever, in Buyer's sole and absolute discretion, including, but not limited to, the feasibility of the Property for Buyer's intended purpose (the "**Feasibility Contingency**"). However, until Buyer cancels, Buyer will proceed in good faith with Buyer's preliminary investigatory steps with respect to this transaction. If Buyer fails to give Seller a written notice of cancellation and/or waiver of the Feasibility Contingency prior to the expiration of the Feasibility Contingency Period, then Buyer will be deemed to have elected to cancel the Agreement under this provision and the Earnest Money shall be returned to Buyer.

(c) Buyer's Financing Contingency. For a period ending at five o'clock p.m. Pacific Time on the sixtieth (60th) day following Buyer's waiver of the Feasibility Contingency (the "**Financing Contingency Period**"), Buyer will have the absolute right to cancel this Agreement if Buyer, in Buyer's sole and absolute discretion, deems that it is unable to secure satisfactory financing, on terms acceptable to Buyer, to develop the Property for Buyer's intended purpose (the "**Financing Contingency**"). If Buyer fails to give Seller a written notice of cancellation and/or waiver of the Financing Contingency prior to the expiration of the Financing Contingency Period, or if Buyer fails to make the Additional Earnest Money Payment described in **Section 5.1(b)(i)**, then Buyer will be deemed to have elected to cancel the Agreement under this provision and the Earnest Money shall be returned to Buyer.

(i) Prior to providing written notice of the cancellation and/or waiver of the Financing Contingency, Buyer shall deposit in escrow the sum of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) as an additional earnest money deposit (the

"**Additional Earnest Money Payment**") with the Escrow Agent. The Additional Earnest Money Payment shall be non-refundable when paid, but shall be credited to the Purchase Price at Closing.

(d) Escrow Agent Prepared to Close and Issue Title Policy. Escrow Agent is prepared to close the transactions contemplated by this Agreement.

(e) Truthfulness of Representations. Seller's representations and warranties set forth in this Agreement are true, complete and correct in all material respects on and as of the Closing *provided, however*, that if Buyer receives actual knowledge that any representation or warranty of Seller in **Section 7.1(c)** is not true, complete and correct in any material respect as of the Closing and does not elect to cancel the Agreement as permitted by this **Section 5.1**, then the representation or warranty will be deemed to have been amended to conform to the knowledge of Buyer.

(f) Full Compliance. Seller has fully performed all of its obligations to be performed by Seller pursuant to this Agreement on or before Closing.

If any of the foregoing conditions are not fulfilled on or before the date by which such contingency is to have been satisfied and such condition has not otherwise been waived by Buyer, Buyer may, by written notice to Seller given at any time prior to Closing, cancel this Agreement. Upon such cancellation, Buyer shall be entitled to a return of the Earnest Money.

5.2 Conditions to Seller's Obligation to Close. Seller's obligation to close this transaction is subject to the satisfaction of the following conditions on and as of the Closing, unless an earlier date is specified:

(a) Escrow Agent Prepared to Close and Issue Title Policy. Escrow Agent shall be prepared to close the transactions contemplated by this Agreement.

(b) Truthfulness of Representations. Buyer's representations and warranties set forth in this Agreement are true, complete and correct in all material respects on and as of the Closing.

(c) Full Compliance. Buyer has fully performed all of its obligations to be performed by Buyer pursuant to this Agreement on or before Closing.

(d) Development Agreement. Buyer and Seller shall have agreed on the form of the Development Agreement.

(e) The SeaTac City Council shall have approved the execution, delivery and performance of the Development Agreement.

5.3 Mutual Contingency - Development Agreement. In addition to the other conditions set forth in this Agreement, the obligations of Seller and Buyer to consummate the transactions contemplated by this Agreement shall be subject to their agreement, prior to the end of the Financing Contingency Period, on the form and content of development agreement (the "**Development Agreement**") which will include, among other provisions (a) a development plan for the Property, (b) time lines which Buyer must satisfy related to the development of the Property,

(c) a right for Seller to repurchase the Property from Buyer if Buyer fails to meet the times lines for the development of the Property at a price to be specified in the Development Agreement, (d) a right of first refusal to purchase all of the Property if Buyer seeks to sell the Property prior to the date Buyer commences construction of its proposed development of the Property pursuant to the development plan described in the Development Agreement, (e) such other terms and conditions as the parties may determine. The Development Agreement shall be recorded at Closing and shall be an Approved Title Exception. If Buyer and Seller have not agreed on the form of the Development Agreement prior to the expiration of the Financing Contingency Period, then unless otherwise agreed in writing by Buyer and Seller, this Agreement shall terminate at the end of the Financing Contingency Period.

ARTICLE 6 CLOSING

6.1 Time of Closing. The Closing of this transaction and escrow (referred to in this Agreement as the "**Closing**") shall occur in the offices of the Escrow Agent no later than one hundred fifty (150) days following Buyer's waiver of the Financing Contingency; however, Buyer may extend the Closing a total of four (4) times, each time for a period of thirty (30) days, by depositing additional earnest money ("**Extension Earnest Money**") with Escrow Agent. Extension Earnest Money shall be non-refundable when paid, but shall be credited to the Purchase Price at Closing. The amounts of the Extension Earnest Money payments shall be as follows:

- (a) An additional Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) for the first thirty (30) day extension;
- (b) An additional Fifty Thousand and 00/100 Dollars (\$50,000.00) for the second thirty (30) day extension;
- (c) An additional Seventy-Five Thousand and 00/100 Dollars (\$75,000.00) for the third thirty (30) day extension;
- (d) An additional One-Hundred Thousand and 00/100 Dollars (\$100,000.00) for the fourth thirty (30) day extension.

6.2 Closing Statements. Prior to Closing, Escrow Agent will prepare separate closing settlement statements for Seller and Buyer, reflecting the various charges, proration and credits applicable to such party, as provided in this Agreement. Prior to Closing, Seller shall have the right to review and approve its closing settlement statement to ensure that such settlement statement conforms to the terms of this Agreement, and the settlement statement for Seller, as approved by Seller, is referred to in this Agreement as the "**Seller Closing Settlement Statement**". Prior to Closing, Buyer shall have the right to review and approve its closing settlement statement to ensure that such settlement statement conforms to the terms of this Agreement, and the settlement statement for Buyer, as approved by Buyer, is referred to in this Agreement as the "**Buyer Closing Settlement Statement**".

6.3 Seller's Closing Documents. On or before the Closing, Seller shall deposit into escrow the following documents for delivery to Buyer at the Closing, each of which shall have been duly executed and, where appropriate, acknowledged:

(a) A Bargain and Sale Deed (the "**Deed**") in the form provided for in RCW Section 64.04.040, conveying the Property to Buyer, subject to current taxes and assessments, reservations in patents, all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, and all matters which an accurate survey of the Property or a physical inspection of the Property would disclose. Water rights, if any, shall be excluded from the coverage of the Deed warranties and shall be transferred by quitclaim only;

(b) A real estate excise tax affidavit in the form required by King County;

(c) A certification to Buyer, signed by Seller under penalties of perjury, certifying that Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of Section 1445 and 7701 of the Internal Revenue Code of 1986 and the related Treasury Regulations;

(d) A counterpart of the Development Agreement and the Memorandum of Development Agreement; and

(e) Such other documents as may be necessary or appropriate to transfer and convey all of the Property to Buyer and to otherwise consummate this transaction in accordance with the terms of this Agreement.

6.4 Buyer's Closing Documents. On or before the Closing, Buyer shall deposit into escrow the following documents for delivery to Seller at the Closing, each of which shall have been duly executed and, where appropriate, acknowledged:

(a) A real estate excise tax affidavit in the form required by King County; and

(b) A counterpart of the Development Agreement and the Memorandum of Development Agreement; and

(c) Such other documents as may be necessary or appropriate to consummate this transaction in accordance with the terms of this Agreement.

6.5 Title Policies.

(a) Standard Owner's Coverage. Promptly following the Closing, Seller shall cause Escrow Agent to provide Buyer with a standard owner's policy of title insurance issued by Escrow Agent (the "**Title Insurer**") in the full amount of the Purchase Price, effective as of the Closing, insuring Buyer that fee simple title to the Property is vested in Buyer, subject only to the usual printed exceptions and exclusions contained in such title insurance policies and to the Approved Title Exceptions. The premium for a standard owner's title insurance policy shall be paid by Seller at Closing.

(b) Extended Coverage. At any time prior to Closing, Buyer may elect to receive an extended coverage owner's policy and may request title insurance endorsements not otherwise provided by Seller in accordance with **Section 5.1(a)(ii)**, in which case Buyer shall be responsible for satisfying, at its cost and prior to Closing, Title Insurer's requirements for such

additional coverage or endorsements, and at Closing, Buyer shall pay the difference between the premium for such policy and any endorsements requested by Buyer and the premium for a standard coverage policy in the amount of the Purchase Price. In no event shall the Closing be conditional upon or extended because of Buyer's election of extended coverage or such special endorsements.

6.6 Closing Costs and Prorations.

(a) Escrow Charges. Upon the Closing, Seller and Buyer each agree to pay one-half of the escrow charges of Escrow Agent.

(b) Recording Fees; Excise Tax. Fees for recording the Deed will be paid by Seller. All other recording fees will be paid by Buyer. Buyer acknowledges Seller is currently exempt from the payment of any excise tax because the Seller is a governmental entity.

(c) Prorations. Buyer acknowledges the Property is currently exempt from the payment of real estate taxes and assessments because Seller is a governmental entity. Buyer shall be responsible for the payment of real estate taxes and assessments from and after the date of the Closing. With respect to any other fees related to the Property from which Seller is not exempt (e.g., storm water fees, conservation fees and noxious weed fees), such fees shall be prorated in escrow as of the Closing, based upon the latest available information. If, at the Closing, the actual fees to be prorated are not available, then, following the Closing and within thirty (30) days of receipt by either Buyer or Seller of the actual statements, Buyer and Seller shall re-prorate such fees among themselves and make any necessary adjusting payments. All prorations and/or adjustments called for in this Agreement will be made on the basis of a 30-day month and actual days elapsed unless otherwise specifically agreed in writing by Seller and Buyer.

(d) Miscellaneous Closing Costs. Any other closing costs not provided for above or elsewhere in this Agreement shall be paid by Buyer and Seller according to the usual and customary practice as determined by Escrow Agent or agreed in writing by Seller and Buyer.

(e) Method of Payment. All closing costs and commissions payable by Seller shall be deducted from Seller's proceeds at the Closing. On or before the Closing, Buyer shall deposit with Escrow Agent cash in an amount sufficient to pay all closing costs payable by Buyer.

6.7 Payments and Disbursements to Be Handled through the Escrow. The various charges, credits and prorations contemplated by this Agreement will be handled by Escrow Agent through the escrow by appropriate charges and credits to Buyer and Seller and will be reflected in the Seller Closing Settlement Statement or the Buyer Closing Settlement Statement, as appropriate. All amounts payable pursuant to this Agreement will be paid to Escrow Agent for disposition through the escrow. Escrow Agent is authorized to make all disbursements to the parties and to third parties contemplated by this Agreement from funds deposited for those purposes, as necessary or appropriate to close this transaction and as set forth in the Seller Closing Settlement Statement and the Buyer Closing Settlement Statement.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 Seller's Representations.

(a) Nature of Seller's Representations. Each of the representations and warranties of Seller contained in this **Section 7.1** constitutes a material part of the consideration to Buyer and Buyer is relying on the correctness and completeness of these representations and warranties in entering into this transaction. Each of the representations and warranties is true and accurate as of the date of execution of this Agreement by Seller, will be true and accurate as of the Closing and will survive the Closing, subject to the provisions of **Section 5.1(e)**, **Section 7.1(d)**, and **Section 11.8(c)**.

(b) Representations and Warranties as to Seller and the Transaction. Seller represents and warrants to Buyer as follows:

(i) Seller. Seller is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Washington, and has full power and authority to enter into and to perform its obligations under this Agreement. Subject to the approval of this Agreement by the SeaTac City Council, the persons executing this Agreement on behalf of Seller have full power and authority to do so and to perform every act and to execute and deliver every document and instrument necessary or appropriate to consummate the transactions contemplated by this Agreement. Seller is not a "foreign person" within the meaning of Section 1445 of the United States Internal Revenue Code of 1986, as amended, and the regulations issued thereunder, and Seller shall execute an affidavit at Closing, in form acceptable to Buyer, confirming such matters.

(ii) Enforceable Nature of Agreement. Subject to the approval of this Agreement by the SeaTac City Council, this Agreement and each of the documents and agreements to be delivered by Seller at the Closing, constitute legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, moratorium, or similar laws affecting the enforcement of creditors' rights generally, and subject, as to enforceability, to general principles of equity, regardless of whether enforcement is sought in a court of law or equity.

(iii) Violations; Consents; Defaults. Neither the execution of this Agreement nor the performance by Seller of its obligations under this Agreement will result in any breach or violation of (A) to Seller's Knowledge, the terms of any law, rule, ordinance, or regulation or of (B) any decree, judgment or order to which Seller is a party now in effect from any court or governmental body. To Seller's Knowledge, there are no consents, waivers, authorizations or approvals from any third party necessary to be obtained by Seller in order to carry out the transactions contemplated by this Agreement. The execution and delivery of this Agreement and performance by Seller of its obligations under this Agreement will not conflict with or result in a breach or default (or constitute an event which, with the giving of notice or the passage of time, or both, would constitute a default) under any indenture, mortgage, lease, agreement, or other instrument to which Seller is a party or by which Seller or any of its assets may be bound.

(c) Representations and Warranties Relating to the Property. Seller represents and warrants to Buyer that, except as disclosed in the Due Diligence Materials:

(i) To Seller's Knowledge, there is no claim, action, suit, proceeding or investigation pending or threatened before any agency, court or other governmental authority which relates to the ownership, use, or title to the Property or any portion thereof, including without limitation any eminent domain proceeding.

(ii) To Seller's Knowledge, no special or general assessments have been levied or are threatened against any part of the Property, except for assessments which are presently of record against the Property or are otherwise disclosed in the Title Report or the Due Diligence Materials.

(iii) To Seller's Knowledge, the Property is not subject to any special tax classification (such as a forestry, agricultural or open space tax classification) that would trigger any compensating tax if Buyer does not continue the special tax classification.

(iv) At Closing the Property will be free and clear of all monetary liens and encumbrances, other than the title exceptions set forth in the Title Report that are approved by Buyer.

(v) To Seller's Knowledge, except for the Commercial Leases (defined in **Section 4.1(d)** above), there are no leases, tenancies, rights of parties in possession, options, rights of first refusal, occupancy agreements, licenses, or other rights or agreements by which third parties have an interest in or right to use the Property.

(vi) To Seller's Knowledge, water, sewer, gas, electricity, telephone, drainage and other utilities and systems are installed across public property to the boundary lines of the Property.

(vii) To Seller's Knowledge, no services, material or work have been supplied to the Property for which payment is past due.

(viii) Except as otherwise disclosed in the Due Diligence Materials, to Seller's Knowledge, no Hazardous Substances have been generated, treated, stored, transferred from, released or disposed of, or otherwise placed, deposited in or located on the Property in violation of applicable law, nor has Seller received notice from any agency or department of the State of Washington, the U.S. Government or any other governmental body concerning any intentional or unintentional action or omission on Seller's part which has resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances on the Property. As used herein, the term "Hazardous Substances" means any toxic or hazardous waste or substances, including, without limitation, asbestos, PCBs, substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S. C. Section 1802 et seq., The Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., and in the Toxic Substance Control Act of 1976, as amended, 15 U.S.C. Section 2601 et seq., or any other applicable local, state or federal environmental statutes.

(ix) Seller has received no written notice of any claims, actions, suits or governmental investigations or proceedings existing or threatened against or involving the Property (including, without limitation any condemnation or eminent domain proceeding).

(x) Seller has not received any written notice of any attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending or threatened against Seller, and none is contemplated by Seller.

(xi) Seller has not entered into any other contracts for the sale of the Property to any other parties, nor do there exist any rights of first refusal or options to purchase the Property.

(d) Seller's Knowledge. For purposes of this Agreement, "**Seller's Knowledge**" means facts or circumstances actually known to Steve Pilcher ("**Seller's Representative(s)**") who Seller represents are the most knowledgeable regarding the Property, without any duty on the part of Seller's Representative(s) to perform any investigation or make any inquiries. Seller's Knowledge does not include knowledge that may be imputed to Seller's Representative(s), or that may otherwise be imputed to Seller or Seller's Representative(s). In no event shall Seller's Representative have any personal liability for any of the obligations of Seller under this Agreement, including the representations and warranties of Seller.

(e) Survival. The representations and warranties made in this Agreement by Seller shall be continuing, and shall be deemed remade by Seller as of the date of Closing with the same force and effect as if in fact specifically remade at that time. All representations and warranties made in this Agreement shall survive the Closing for a period of twelve (12) months and shall not merge into any instrument of conveyance delivered at the Closing. Seller shall not knowingly take any action which causes the representations and warranties in this Agreement to be untrue or incorrect at Closing in any material respect. If prior to Closing Seller comes to have actual knowledge of a fact or circumstance that would render a representation or warranty by Seller in this Agreement inaccurate in any material respect when made, Seller shall promptly advise Buyer thereof in writing. Seller shall use commercially reasonable good faith efforts to take corrective action to remedy any such defects as soon as reasonably possible. If Buyer has actual knowledge that any of Seller's representations or warranties shall be untrue and incorrect at Closing in any material respect, then Buyer may in its sole discretion, by written notice to Seller either (i) proceed with this transaction, accepting the applicable representation or warranty as being modified by the change in facts or circumstances, or (ii) terminate this Agreement and declare this Agreement of no further force and effect, in which event the Earnest Money shall be returned to Buyer and Buyer shall be entitled to pursue any remedies available to it pursuant to **Section 10.2** if the untrue or incorrect representation or warranty occurred as a result of Seller's default hereunder.

(f) Maximum Liability of Seller. Notwithstanding any provision to the contrary contained in this Agreement or any documents executed by Seller pursuant to this Agreement, following consummation of the Closing, the maximum aggregate liability of Seller under this Agreement and any and all documents executed pursuant to this Agreement or in connection herewith (including, without limitation, the breach of any representations and warranties of Seller contained in such documents) for which a claim is timely made by Buyer shall not exceed five percent (5%) of the Purchase Price \$, plus any amounts payable to Seller pursuant to **Section 11.4** of this Agreement (the "**Cap**"). Buyer will not have any right to bring any action against Seller as a result of any untruth or inaccuracy of such representations and warranties, or any such breach, unless and until the aggregate amount of all liability and losses arising out of any

such untruth or inaccuracy, or any such breach, exceeds \$50,000, in which event the full amount of such claims shall be actionable, up to the Cap. Any action, suit or proceeding brought by Buyer against Seller arising from or related to this Agreement must be commenced and served, if at all, not more than twelve (12) years after the date of the Closing. The limitations in this **Section 7.1(f)** shall apply to all of Seller's obligations under this Agreement and any of the documents executed by Seller pursuant to this Agreement. This **Section 7.1(f)** shall survive the Closing or the earlier termination of this Agreement.

7.2 Buyer's Representations.

(a) Nature of Buyer's Representations. Each of the representations and warranties of Buyer contained in this **Section 7.2** constitutes a material part of the consideration to Seller and Seller is relying on the correctness and completeness of these representations and warranties in entering into this transaction. Each of the representations and warranties is true and accurate as of the date of execution of this Agreement by Buyer, will be true and accurate as of the Closing, and will survive the Closing subject to the provisions of **Section 5.2(b)**.

(b) Representations and Warranties as to Buyer and the Transaction. Buyer represents and warrants to Seller as follows:

(i) Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Washington, and has full power and authority to enter into and to perform its obligations under this Agreement. The persons executing this Agreement on behalf of Buyer have full power and authority to do so and to perform every act and to execute and deliver every document and instrument necessary or appropriate to consummate the transactions contemplated by this Agreement.

(ii) All entity action on the part of Buyer and its constituents which is required for the execution, delivery and performance by Buyer of this Agreement and each of the documents and agreements to be delivered by Buyer at the Closing has been duly and effectively taken.

(iii) This Agreement and each of the documents and agreements to be delivered by Buyer at the Closing, constitute legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, moratorium, or similar laws affecting the enforcement of creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a court of law or equity).

(iv) Neither the execution of this Agreement nor the performance by Buyer of its obligations under this Agreement will result in any breach or violation of (A) to Buyer's actual knowledge, the terms of any law, rule, ordinance, or regulation or of (B) any decree, judgment or order to which Buyer or any constituent member of Buyer is a party now in effect from any court or governmental body. There are no consents, waivers, authorizations or approvals from any third party necessary to be obtained by Buyer in order to carry out the transactions contemplated by this Agreement. The execution and delivery of this Agreement and performance

by Buyer of its obligations under this Agreement will not conflict with or result in a breach or default (or constitute an event which, with the giving of notice or the passage of time, or both, would constitute a default) under Buyer's organizational documents or any indenture, mortgage, lease, agreement, or other instrument to which Buyer is a party or by which Buyer or any of its assets may be bound.

(v) (1) None of Buyer or any Person who owns any direct equity interest in or controls Buyer currently is identified on the OFAC List or otherwise qualifies as a Prohibited Person, and (2) none of Buyer or any Person who owns any direct equity interest in or controls Buyer is in violation of any applicable laws relating to anti-money laundering or anti-terrorism, including, without limitation, any applicable laws related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time. For purposes hereof: (A) the term "**Person**" shall mean any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of Buyer; (B) the term "**Prohibited Person**" shall mean any Person identified on the OFAC List or any other Person with whom a U.S. Person may not conduct business or transactions by prohibition of Federal law or Executive Order of the President of the United States of America; (C) the term "**OFAC List**" shall mean the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and accessible through the internet website www.treas.gov/ofac/t11sdn.pdf.

ARTICLE 8 ADDITIONAL COVENANTS

8.1 Possession. Possession of the Property shall be delivered to Buyer upon the Closing, free from any Commercial Leases, tenants and/or occupants. Following Buyer's written notice of the cancellation and/or waiver of the Financing Contingency, but prior to Closing, Seller agrees to terminate the Commercial Leases have all tenants and/or occupants vacated from the Property at the City's cost and expense.

8.2 Vacation of Military Road South. The Buyer indicated to the Seller their interest in exploring the vacation of Military Road South between International Boulevard and South 152nd Street. It is understood by the Buyer that any request for a street vacation will be processed and reviewed by the City in accordance with State law and City code.

8.3 Condemnation; Casualty. In the event that all or any material portion of the Property is the subject of a taking or condemnation under the provisions of eminent domain prior to the date of Closing, Buyer may terminate this Agreement upon written notice to Seller given within ten (10) business days of the notice of any pending taking or condemnation and the Earnest Money and any extension payments shall be refunded to Buyer. For purposes of this **Section 8.3**, "**material portion**" means a taking or condemnation which in Buyer's opinion will materially affect Buyer's ability to develop the Property in the future. If Buyer does not elect to terminate this Agreement, then Seller shall have no obligation to repair or replace any damage caused by the

foregoing nor shall the Purchase Price be reduced, but at Closing, Seller shall assign to Buyer its rights to any condemnation proceeds resulting from such taking and shall not make any settlements without Buyer's prior written approval. In the event that all or any material portion of the improvements on the Property are damaged or destroyed by any casualty prior to the date of Closing, Buyer shall have no right to terminate this Agreement and Seller shall have no obligation to repair or replace any damage or destruction nor shall the Purchase Price be reduced, but at Closing, Buyer shall receive an assignment of the proceeds of any casualty insurance otherwise payable to Seller up to the amount necessary to level the applicable portions of the Property to grade level and remove all debris and the balance, if any, shall be paid to Seller.

8.4 Cost of Environmental Remediation. Seller has disclosed that property adjacent to the Property is contaminated as a result of use as a dry cleaning facility. In order to remediate any known contamination on the Property the Seller and Buyer, during the Feasibility Contingency, shall cooperatively prepare and agree to a draft clean-up action plan to be submitted to the Department of Ecology for approval. The draft clean-up action plan shall include the specific location and type of contamination to be remediated, and cost estimates for associated work to completely remediate the soils to allow construction according to the Development Agreement (the "**Environmental Remediation**"). Buyer shall be solely responsible for performance of the Environmental Remediation at the direction of the Seller. Upon completion of the Environmental Remediation, Seller shall reimburse Buyer for all costs of the Environmental Remediation in accordance with the approved clean-up plan, as detailed in an accounting from an environmental consultant. Buyer and Seller agree that the reimbursement made from Seller to Buyer shall be allocated as a net reduction of land value for purposes of appraisals and cost accounting.

ARTICLE 9 BROKERAGE

9.1 Brokerage.

Seller and Buyer each warrants that they have not dealt with any broker in connection with this transaction. If any person shall assert a claim to a finder's fee, brokerage commission or other compensation on account of alleged employment as a finder or broker or performance of services as a finder or broker in connection with this transaction, the party under whom the finder or broker is claiming shall indemnify, defend, and hold harmless the other party and such party's Related Parties for, from and against any and all Claims in connection with such claim or any action or proceeding brought on such claim.

ARTICLE 10 DEFAULTS AND REMEDIES

10.1 Defaults by Buyer.

(a) Buyer's Default. The occurrence of any of the following will constitute a default by Buyer under this Agreement:

(i) If, by the time set for the Closing, Buyer has failed to pay the balance of the Purchase Price into escrow, to deposit into escrow the documents and other items to be deposited by Buyer in escrow by the time set for Closing, or to perform any other obligation of

Buyer to be performed by the time set for Closing (all such obligations being referred to collectively as the "**Buyer Closing Obligations**"); or

(ii) If Buyer fails to observe or perform any of the other covenants or agreements contained in this Agreement to be observed or performed by Buyer, but such failure, if of a type that can be cured or corrected by Buyer, will not be a default unless such failure continues for fifteen (15) days after written notice of breach is given by Seller to Buyer except that if such failure is of such a character as to require more than fifteen (15) days to correct, Buyer will not be in default if Buyer commences actions to correct such failure within the fifteen (15) day period and thereafter, using reasonable diligence, cures such failure. In no event, however, will the cure period be extended beyond the time set for Closing.

(b) Seller's Remedies.

(i) If Buyer is in default, Seller's sole and exclusive remedy with respect to such default shall be to cancel this Agreement and the escrow, such cancellation to be effective immediately upon Seller giving written notice of cancellation to Buyer and Escrow Agent. Upon such cancellation, Seller shall be entitled to receive and retain the Earnest Money as liquidated damages for such failure and not as a penalty, the parties agreeing and stipulating that the exact amount of damages would be extremely difficult to ascertain and that the earnest money deposits constitute a reasonable and fair approximation of such damages.

(ii) Seller irrevocably waives any right to damages or any other remedies or form of relief except as specifically set forth in this **Section 10.1(b)**.

10.2 Default by Seller.

(a) Seller's Default. The occurrence of any of the following will constitute a default by Seller under this Agreement:

(i) If, by the time set for the Closing, Seller has failed to deposit into escrow the documents and other items to be deposited by Seller in escrow by the time set for Closing, or to perform any other obligation of Seller to be performed by the time set for Closing (all such obligations being referred to collectively as the "**Seller Closing Obligations**"); or

(ii) If Seller fails to observe or perform any of the other covenants or agreements contained in this Agreement to be observed or performed by Seller, but such failure, if of a type that can be cured or corrected by Seller, will not be a default unless such failure continues for five (5) days after written notice of breach is given by Buyer to Seller except that if such failure is of such a character as to require more than five (5) days to correct, Seller will not be in default if Seller commences actions to correct such failure within the five (5) day period and thereafter, using reasonable diligence, cures such failure. In such event, the time for Closing will automatically be extended to permit such cure within the time period above provided.

(b) Buyer's Remedies.

(i) If Seller is in default, then Buyer may, at its option, bring suit to specifically enforce this Agreement, provided that if specific performance is not available as a

remedy to Buyer as a result of Seller's conveyance of the Property prior to the scheduled closing date to a party other than the Buyer, Buyer shall be entitled to recover from Seller 100% of any consideration paid to Seller for such conveyance in excess of the Purchase Price

(ii) Buyer irrevocably waives any right to damages or any other remedies or form of relief, except as specifically set forth in this **Section 10.2(b)**.

ARTICLE 11 GENERAL PROVISIONS

11.1 Certain Definitions. As used in this Agreement, certain capitalized terms are defined as follows:

(a) "**Claims**" means any and all obligations, debts, covenants, conditions, representations, costs, and liabilities and any and all demands, causes of action, and claims, of every type, kind, nature or character, direct or indirect, known or unknown, absolute or contingent, determined or speculative, at law, in equity or otherwise, including attorneys' fees and litigation and court costs.

(b) "**Related Parties**" means, with respect to any person or entity, the officers, directors, shareholders, partners, members, employees, agents, attorneys, successors, personal representatives, heirs, executors, or assigns of any such person or entity.

11.2 Assignment.

(a) Generally. Buyer may not assign this Agreement without Seller's prior written consent, except, Buyer may assign this Agreement to a special purpose entity affiliated with Buyer, if it provides written notice of such assignment or nomination to Seller and Escrow Agent prior to the Close of Escrow. Any such assignment or nomination shall not relieve Buyer of its obligations hereunder.

(b) Assignment by Operation of Law; Bankruptcy. In no event will this Agreement or any interest in this Agreement or the Property be assigned or assignable by operation of law or by voluntary or involuntary bankruptcy proceedings without the prior written consent of Seller. In no event will this Agreement or any rights or privileges of Buyer under this Agreement be deemed an asset of Buyer under any bankruptcy, insolvency or reorganization proceedings.

11.3 Binding Effect. Except as limited by the provisions of **Section 11.2**, the provisions of this Agreement are binding upon and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

11.4 Attorneys' Fees. If either party to this Agreement initiates or defends any legal action or proceeding with the other party in any way connected with this Agreement, the prevailing party in any such legal action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover from the losing party in any such legal action or proceeding its reasonable costs and expenses of suit, including reasonable attorneys' fees and expert witness fees.

11.5 Waivers. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; ***provided, however***, such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement.

11.6 Notices. All notices shall be in writing and shall be made by hand delivery, express delivery service, freight prepaid, or by email. Notices will be delivered or addressed to Seller and Buyer at the addresses set forth on the first page of this Agreement or at such other address as a party may designate to the other party in writing. Any such notice shall be deemed to be given and received and shall be effective (a) on the date on which the notice is delivered, if notice is given by hand delivery or express delivery service; and, (b) when transmitted properly, in the case of email, being deemed to have been properly transmitted as of the date of successful transmission of the entire notice; ***provided, however***, that if successful transmission is completed after 5:00 p.m. PST for the recipient on such day, then the email transmission will be deemed to have been given and received and become effective on the next succeeding day.

11.7 Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

11.8 Survival. The following obligations of the parties will survive the Closing or cancellation of this Agreement, whether contained in this Agreement or in any agreement, instrument, or other document given by a party in connection with the transactions contemplated by this Agreement:

- (a) Post-Closing Covenants. Any and all obligations of the parties that are to be performed following the Closing;
- (b) Indemnification Obligations. All indemnity obligations of the parties; and
- (c) Other Obligations. Any other obligation with respect to which it is expressly provided that it will survive the Closing or cancellation of this Agreement.

11.9 Counterparts. This Agreement may be executed in counterparts (and by different parties to this Agreement in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Any facsimile or electronic (email) signature hereon shall, for all purposes, be deemed an original of the same.

11.10 References. References in this Agreement to "Articles," "Sections," or "Exhibits" are to the Articles and Sections of this Agreement and the Exhibits to this Agreement. Any reference to this Agreement includes any and all amendments, extensions, modifications, renewals, or supplements to this Agreement. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement.

11.11 Construing the Agreement. Each of the parties to this Agreement acknowledges that such party has had the benefit of independent counsel with regard to this Agreement and that

this Agreement has been prepared as a result of the joint efforts of all parties and their respective counsel. Accordingly, all parties agree that the provisions of this Agreement shall not be construed or interpreted for or against any party to this Agreement based upon authorship or any other factor but shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties to this Agreement.

11.12 Partial Invalidity. If any portion of this Agreement is determined to be unconstitutional, unenforceable or invalid, such portion of this Agreement shall be stricken from and construed for all purposes not to constitute a part of this Agreement, and the remaining portion of this Agreement shall remain in full force and effect and shall, for all purposes, constitute the entire Agreement.

11.13 Governing Law. This Agreement shall be construed according to the laws of the State of Washington, without giving effect to its conflict of laws principles.

11.14 Time of Essence; Time Periods. Time is of the essence of this Agreement. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at five o'clock p.m. Pacific Time on the last day of the applicable time period provided for in this Agreement. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday. For purposes of this Agreement, the term "**business day**" means any day other than a Saturday, a Sunday, or any day that is recognized as a legal holiday.

11.15 Entire Agreement. This Agreement, which includes Exhibit A and Exhibit B, constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by Buyer and Seller.

11.16 Tax Free Exchange. The parties acknowledge that either or both parties hereto may consummate the transaction contemplated by this Agreement through an exchange permitted by Section 1031 of the Internal Revenue Code of 1986, as amended. The parties shall reasonably cooperate with one another in accomplishing such exchange(s); **provided, however**, that neither party shall have an obligation to do anything that would cause it to incur any liability or obligation or to take title to any property other than the Property, and **provided further** that such exchange(s) shall in no event delay the Closing.

11.17 Seller Disclosure Statement. PURSUANT TO RCW CH. 64.06, AS AMENDED BY CHAPTER 64, LAWS OF 2010, BUYER HEREBY WAIVES ITS RIGHT TO RECEIVE THE SELLER DISCLOSURE STATEMENT REFERRED TO THEREIN WITH RESPECT TO THE PROPERTY. THIS WAIVER DOES NOT EXTEND TO THE SECTION OF THE DISCLOSURE STATEMENT ENTITLED "ENVIRONMENTAL".

11.17.1 Environmental Section Only. Seller shall provide Buyer with the "Environmental" section of the Seller Disclosure Statement within five (5) days of the Opening

Date, and by executing this Agreement, Buyer waives its right to receive the balance of the completed Seller Disclosure Statement with respect to the Property.

11.17.2 **No Reliance.** Buyer further agrees that any information discovered by Buyer concerning the Property shall not obligate Seller to prepare and deliver to Buyer a revised or updated Seller Disclosure Statement. Buyer hereby waives any right to receive an updated or revised Seller Disclosure Statement, regardless of the source of any new information. Buyer further warrants that it is a sophisticated buyer who is familiar with the ownership and development of real estate projects similar to the Property and Buyer has or will have adequate opportunity to complete such independent inspections of the Property it deems necessary, and will acquire the Property solely on the basis of and in reliance upon such examinations and not on any information provided in any Seller Disclosure Statement or otherwise provided or to be provided by Seller or by anyone acting or claiming to act by, through or under or on Seller's behalf.

11.17.3 **Waiver of Right to Rescind.** BUYER HEREBY WAIVES, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, THE RIGHT TO RESCIND THIS AGREEMENT PURSUANT TO ANY PROVISION OF RCW 64.06, AS IT MAY BE AMENDED FROM TIME TO TIME. IT IS THE INTENT OF BUYER THAT ANY SELLER DISCLOSURE STATEMENT PROVIDED BY SELLER WILL NOT BE RELIED UPON BY BUYER, AND SHALL GIVE BUYER NO RIGHTS WITH RESPECT TO SELLER OR UNDER THIS AGREEMENT. THIS WAIVER OF THE RIGHT TO RESCIND APPLIES TO THE SELLER DISCLOSURE STATEMENT PROVIDED TO BUYER DURING THE INSPECTION PERIOD AND APPLIES PROSPECTIVELY TO ANY UPDATED OR REVISED SELLER DISCLOSURE STATEMENTS THAT MAY BE PROVIDED BY SELLER TO BUYER. THE PROVISIONS OF THIS SECTION 11.17 SHALL SURVIVE THE CLOSING.

11.18 **No Recording.** The parties to this Agreement agree that neither this Agreement nor any memorandum or affidavit concerning it will be recorded.

11.19 **"As Is" Sale; Release.**

11.19.1 BUYER AND ITS REPRESENTATIVES, PRIOR TO THE DATE OF CLOSING, WILL HAVE BEEN AFFORDED THE OPPORTUNITY TO MAKE SUCH INSPECTIONS OF THE PROPERTY AND MATTERS RELATED THERETO AS BUYER AND ITS REPRESENTATIVES DESIRE. BUYER ACKNOWLEDGES AND AGREES THE PROPERTY IS TO BE SOLD TO AND ACCEPTED BY BUYER IN AN "AS IS" CONDITION WITH ALL FAULTS. BUYER FURTHER ACKNOWLEDGES THERE ARE IMPACTS TO THE PROPERTY'S SOIL AND GROUNDWATER FROM OFF-PROPERTY SOURCES. THE SUMMARY OF ENVIRONMENTAL ISSUES IN THE PRECEDING SENTENCE IS ILLUSTRATIVE ONLY, AND SHALL NOT BE REGARDED AS A COMPLETE OR PRECISE DESCRIPTION OF SUCH ISSUES. BUYER FURTHER ACKNOWLEDGES RECEIPT OF THE ENVIRONMENTAL REPORTS ("**ENVIRONMENTAL REPORTS**") LISTED ON EXHIBIT B ATTACHED. SELLER MAKES NO REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF SAID ENVIRONMENTAL REPORTS. EXCEPT AS EXPRESSLY SET FORTH IN **SECTION 7** OF THIS AGREEMENT, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY;

IN PARTICULAR, BUT WITHOUT LIMITATION, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE USE, CONDITION, TITLE, OCCUPATION OR MANAGEMENT OF THE PROPERTY, OR COMPLIANCE WITH APPLICABLE STATUTES, LAWS, CODES, ORDINANCES, REGULATIONS, REQUIREMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (WHETHER OR NOT OF RECORD). BUYER ACKNOWLEDGES IT IS ENTERING INTO THIS AGREEMENT ON THE BASIS OF BUYER'S OWN INVESTIGATION OF THE PHYSICAL AND ENVIRONMENTAL CONDITIONS OF THE PROPERTY, INCLUDING THE SUBSURFACE CONDITIONS, AND BUYER ASSUMES THE RISK THAT ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS MAY NOT HAVE BEEN REVEALED BY ITS INVESTIGATION. BUYER ACKNOWLEDGES THAT NOTWITHSTANDING ANY PRIOR OR CONTEMPORANEOUS ORAL OR WRITTEN REPRESENTATIONS, STATEMENTS, DOCUMENTS OR UNDERSTANDINGS, THIS AGREEMENT CONSTITUTES THE ENTIRE UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THE PURCHASE AND SALE OF THE PROPERTY AND SUPERSEDES ANY SUCH PRIOR OR CONTEMPORANEOUS ORAL OR WRITTEN REPRESENTATIONS, STATEMENTS, DOCUMENTS OR UNDERSTANDINGS.

11.19.2 BUYER, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES SELLER AND/OR SELLER'S EMPLOYEES, REPRESENTATIVES, AGENTS, HEIRS AND PREDECESSORS, OF AND FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH BUYER NOW HAS OR WHICH BUYER MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT; THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT; THE RESOURCE CONSERVATION AND RECOVERY ACT; AND THE MODEL TOXICS CONTROL ACT (COLLECTIVELY, "**ENVIRONMENTAL LAWS**"). THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, OR SELLER'S EMPLOYEES, REPRESENTATIVES, AGENTS, HEIRS OR PREDECESSORS.

11.19.3 OTHER THAN AS DETAILED IN SELLER'S OBLIGATIONS IN SECTION 8.4 HEREIN, IT IS THE INTENT OF THE PARTIES THAT AFTER THE DATE OF CLOSING, SELLER AND OTHER RELEASED PARTIES SHALL HAVE NO LIABILITY WHATSOEVER TO BUYER FOR ANY CONDITIONS AT THE PROPERTY.

11.19.4 NOTHING IN THIS **SECTION 11.19** IS INTENDED TO RELEASE SELLER FROM ANY LIABILITY FOR THE BREACH OF THE EXPRESS REPRESENTATIONS AND WARRANTIES IN **SECTION 7.1** ABOVE.

11.19.5 BUYER AND SELLER AGREE THIS SECTION 11.19 SHALL SURVIVE CLOSING.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

DRAFT

EXECUTED as of the date written on the first page of this Agreement.

SELLER:

City of SeaTac

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____

Its: _____

BUYER:

CAP Acquisitions, LLC

By: _____

Its: _____

DRAFT

EXHIBIT A
LEGAL DESCRIPTION AND MAP OF THE PROPERTY

[Attached]

DRAFT

EXHIBIT B

LIST OF DUE DILIGENCE MATERIALS

DRAFT