

ORDINANCE No. 118009

~~111090~~  
COUNCIL BILL No. 111090

*W*  
*Law Department*

The City of Seattle--Legislative

INDEXED

REPORT OF COMMITTEE

Honorable President:

Your Committee on \_\_\_\_\_

to which was referred the within Council Bill No. \_\_\_\_\_  
report that we have considered the same and respectfully recommend that

COMPTROLLER FILE No. \_\_\_\_\_

Introduced: <i>Jan. 16, 1996</i>	By: <i>PAGELER</i>
Referred: <i>Jan 16, 1996</i>	To: <i>Utilities &amp; Environmental Management Committee</i>
Referred:	To:
Referred:	To:
Reported: <i>FEB - 5 1996</i>	Second Reading: <i>FEB - 5 1996</i>
Third Reading: <i>FEB - 5 1996</i>	Signed: <i>FEB - 5 1996</i>
Presented to Mayor: <i>FEB - 5 1996</i>	Approved: <i>FEB 12 1996</i>
Returned to City Clerk: <i>FEB 14 1996</i>	Published: <i>Full</i>
Vetted by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

*1-29-96 Motion by pageler to hold  
Full Council vote 9-0*

Committee Chair



ORDINANCE 118009

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AN ORDINANCE authorizing the sale of property at 1015 Third Avenue, commonly known as the City Light Building.

WHEREAS, the City Light Building's occupants have been relocated to leased space in the Key Tower; and

WHEREAS, the City Light Building, which was originally acquired for public utility purposes, is no longer required for providing continued public utility service and is, accordingly, surplus to the City's needs; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of City Light is hereby authorized to sell, pursuant to R.C.W. 35.94.040, the real property located at 1015 Third Avenue, which is commonly known as the City Light Building, and which is described as follows:

Lots 2, 3, 6 and 7, Block 11, Boren and Denny's Addition, as recorded in Volume 1 of Plats, Page 27, Records of King County Washington, except portion condemned for street.

Section 2. Said sale shall be in accordance with the terms and conditions specified in the Purchase and Sale Agreement negotiated with the proposed buyer and approved by the Law Department, which agreement is attached hereto and labeled "Exhibit A."

Section 3. The Superintendent of City Light is authorized to accept, on closing, either all cash or funds wired to such bank and account as may be specified by the City's Finance Director, and to execute a deed to complete the sale authorized in Section 1, upon payment of the consideration therefor.

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1 Section 4. The proceeds of the sale authorized by Section 1 hereof, namely, the sum  
2 of Two Million Six Hundred Thousand Dollars less Closing Costs, shall be deposited in the  
3 Light Fund.

4 Section 5. Any act pursuant to the authority of this ordinance and prior to its  
5 effective date is hereby ratified and confirmed.

6 Section 6. This ordinance shall take effect and be in force thirty (30) days from and  
7 after its approval by the Mayor, but if not approved and returned by the Mayor within ten  
8 (10) days after presentation, it shall take effect as provided by Municipal Code Section  
9 1.04.020.

10 Passed by the City Council the 5 day of February, 1996,  
11 and signed by me in open session in authentication of its passage this 5 day of  
12 February, 1996.

13  
14  
15  
16 Jan Deago  
17 President of the City Council

18 Approved by me this 12 day of February, 1996.

19  
20  
21 Jan Deago  
22 Mayor (acting)

23 Filed by me this 14 day of February, 1996.

24  
25 Judith E. Lipp  
26 City Clerk

(Seal)

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EXHIBIT A

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS CONTRACT CONTROLS THE TERMS OF SALE OF THE PROPERTY.  
READ THIS CONTRACT CAREFULLY BEFORE SIGNING IT.

This Real Estate Purchase and Sale Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of January, 1996, by and between THE CITY OF SEATTLE, a city of the first class of the State of Washington ("Seller") and 1015 Third Avenue L.L.C., a Washington limited liability company ("Buyer").

IN CONSIDERATION of the mutual promises and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Agreement to Sell and to Purchase Property.** Seller agrees to sell, convey, transfer, and assign to Buyer, and Buyer agrees to purchase certain real property located in Seattle, Washington that may be described as follows:

Lots 2, 3, 6, and 7, Block 11, Boren & Denny's Addition, as recorded in Vol. 1 of Plats, Page 27, Records of King County, Washington, EXCEPT portion condemned for street,

together with (i) all the building and other improvements on such real property and the other improvements and rights appurtenant to such real property, including without limitation, all vinyl floor coverings, attached carpeting, other floor coverings, light fixtures and bulbs (other than free-standing lamps and desk lamps), plumbing fixtures; ventilating, heating and cooling equipment, electrical equipment (other than the three (3) network transformers to be left on the Property as Seller-owned equipment but enclosed by Seller within a transformer vault in the building on the Property pursuant to Subsection 5.10.5 of this Agreement), local-area-network or other data cabling and terminators therefor, built-in appliances, cafeteria equipment and all other built-ins, fixtures, counters, and equipment of any kind and nature whatsoever, except the items set forth in Schedule 1 hereof which Seller shall remove from the Property (as hereinafter defined) prior to the Closing Date; (ii) Seller's interest in any easements, covenants and other rights appurtenant to such real property; (iii) Seller's interest in any land lying in the right-of-way of any street or alley in front of or adjoining such real property to the center line thereof and in any award made after the date of this Agreement for any taking by condemnation or for any damage to the Land by reason of any change of grade of any street or alley; (iv) Seller's interest under any permits allowing Seller to use and occupy any vaults lying in or under the right-of-way of any street or alley in front of or adjoining such real property; (v) all of Seller's interest in the King County Lease (as hereinafter defined) and in any other leases affecting the Property; (vi) all supplies, tools, decorations, furnishings, fixtures, equipment, machinery, landscaping, photographs of the building and other tangible personal property owned by Seller and used by it solely in connection with the management, operation, maintenance and repair of such real property all as set forth in Schedule 2; and (vii) all plans and specifications for the building and other improvements on such real property, all computer aided design ("CAD")

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drawings of the building and other improvements on such real property on magnetic media in a format acceptable to Buyer (such real property and all of such other rights and items are hereinafter collectively called the "Property"), BUT SUBJECT TO an existing Lease to the Municipality of Metropolitan Seattle (now King County) of 2,354 square feet of space in the subbasement (Level C) of the Property and 232 square feet of space in the basement (Level B) of the Property through March 31, 2003 (the "King County Lease"), for an electrical rectifier vault for the operation of the downtown electric trolley system (King County Recording No. 7805080534); AND SUBJECT TO Building, Zoning, Use and other regulations and restrictions established by law at the time this Agreement is fully executed; AND SUBJECT TO the terms and conditions of this Agreement as follows:

**2. Purchase Price.**

**2.1. Total Price.** The total purchase price for the Property is Two Million Six Hundred Thousand and No/100 Dollars (\$2,600,000.00).

**2.2. Deposit.** Buyer will deposit with Seller as earnest money the sum of Two Hundred Thousand and No/100 Dollars (\$200,000) in the form of a promissory note due in full in cash on the Contingency Date (as hereinafter defined), subject, however, to satisfaction or waiver of contingencies by Buyer (the "Deposit"). Once the promissory note is paid in full in cash the Deposit shall be non-refundable, except as otherwise provided in Section 7 relating to Seller's default or failure to perform. The Deposit shall be applied as a credit against the total purchase price at Closing.

**3. Personal Property.** The total purchase price shall include payment for the following personal property, which shall be conveyed to Buyer at Closing: window shades, draperies, shutters, blinds, curtain rods, and other window treatments.

**4. Conditions Precedent.**

**4.1. Conditions Precedent to Buyer's Obligations.** The obligations of Buyer hereunder shall be subject to the fulfillment and satisfaction of the following conditions prior to or on the Closing Date (as defined in Subsection 6.1) or such earlier date(s) as may be provided in this Section 4.1 with respect to specific conditions, which conditions are for the benefit of Buyer and may be waived only in writing by Buyer, as follows:

**4.1.1. Compliance with Obligations.** Seller shall have performed and complied in all material aspects, at the appropriate times for such performance and compliance, with the obligations, covenants and agreements under this Agreement to be performed by Seller.

**4.1.2. Title and Survey Matters.**

**4.1.2.1. Title Binder.** Seller authorizes Transamerica Title Insurance Company (the "Closing Agent") to apply for, obtain and deliver to Buyer, as soon as practicable after the execution and delivery of this Agreement, a preliminary commitment for an owner's extended coverage ALTA 1987 form title insurance policy issued by Transamerica Title Insurance Company describing the Property, showing all matters pertaining to the Property,

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listing Buyer as the prospective named insured and showing as the policy amount the total purchase price (the "Title Policy"). At the same time, Transamerica Title Insurance Company shall also deliver to Buyer a true, correct and legible copy of all documents (the "Title Documents") referred to in such title commitment as conditions or exceptions to title to the Property. (Such title insurance policy commitment and the Title Documents are collectively referred to herein as the "Title Binder").

**4.1.2.2. Exceptions and Defects in Title To Which Buyer May Not Object.** The following shall not constitute exceptions or defects in the title to which Buyer may object:

- (a) The King County Lease;
- (b) Rights reserved in Federal patents and State deeds;
- (c) Building or use restrictions consistent with current zoning and other land use regulations established by law;
- (d) Usual and ordinary public utility easements not inconsistent with Buyer's intended use of the Property;
- (e) Other easements not inconsistent with Buyer's intended use;
- (f) Reserved oil and mineral rights; and
- (g) Non-delinquent real estate taxes and installments of assessments.

**4.1.2.3. Title Objections.** Buyer shall have until ten (10) days after delivery to Buyer of the Title Binder, to approve or disapprove the title exceptions other than those specified in Subsection 4.1.2.2 hereof, in Buyer's sole and absolute discretion. If Buyer fails to give Seller notice of Buyer's disapproval of an exception set forth in the Title Binder, Buyer shall be deemed to have waived such exception. If Buyer disapproves an exception, then at any time thereafter Buyer may (i) provide Seller with such reasonable period of time within which to remove the exception, in which event the Closing Date shall be extended, if necessary, until said exception has been removed; (ii) attempt to remove the exception, in which event the Closing Date shall be extended until the exception has been removed; (iii) terminate this Agreement by delivery of a notice thereof to Seller and Closing Agent, in which event all of the rights and obligations of the parties under this Agreement shall terminate; or (iv) close the purchase of the Property subject to such uncured exception, in which event the uncured exception shall be deemed to be a Permitted Exception and shall be included as an exception in the Title Policy to be delivered to Buyer at Closing.

**4.1.3. Property Reports and Information; Property Inspection.** Within ten (10) days after the execution and delivery of this Agreement by both parties, Seller shall furnish to Buyer a copy of (a) any report prepared within the ten (10) year period that immediately precedes the date this Agreement is fully executed that to the best of Seller's knowledge (i) is in the Seller's possession, custody or control; and (ii) is readily accessible to Seller; and (iii)

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relates to the physical condition of the Property, the structural condition of the Property, the compliance of the Property with applicable fire and life safety laws and the Americans with Disabilities Act, or the environmental condition of the Property (including, without limitation, the presence of any Hazardous Substance (as defined in this Agreement) on the Property); together with a copy of (b) all applicable licenses for the Property with all federal, state and local governmental authorities that are readily accessible to Seller and are in the Seller's possession, custody or control; (c) all required certificates of occupancy for the Property that are readily accessible to Seller and are in the Seller's possession, custody or control; (d) every lease currently affecting the Property, including the King County Lease, certified by Seller to be a true copy of the original thereof; (e) every then-in force service contract affecting the Property, including without limitation, the elevator service and pest control contracts, certified by the Seller to be a true copy of the original thereof; (f) the report entitled "City of Seattle Seismic Hazard Program Task IV Report, Facilities Screening, Seattle City Light, Jan. 1993" prepared by EQE Engineering and Design; and (g) every structural, fire, safety, and Hazardous Substance study prepared within the ten (10) year period that immediately precedes the date this Agreement is fully executed that to the best of Seller's knowledge (i) is readily accessible to Seller, and (ii) pertains to the Property, and (iii) is in Seller's possession, custody or control.

Buyer shall have inspected, reviewed and approved, in its sole and absolute discretion: (a) the physical condition of the Property; (b) the structural condition of the Property; (c) the compliance of the Property with applicable fire and life safety laws and the Americans with Disabilities Act; (d) the environmental condition of the Property, including without limitation, the presence of any Hazardous Substance; (e) all applicable licenses for the Property with all federal, state and local governmental authorities; (f) all required certificates of occupancy for the Property; (g) the King County Lease and all other leases affecting the Property; (h) the report entitled "City of Seattle Seismic Hazard Program Task IV Report, Facilities Screening, Seattle City Light, Jan. 1993" prepared by EQE Engineering and Design; and (i) every structural, fire, safety, and Hazardous Substance study pertaining to the Property prepared within the ten (10) year period that immediately precedes the date this Agreement is fully executed that (i) is readily accessible to Seller, and (ii) pertains to the Property and (iii) is in Seller's possession, custody or control (collectively, the "Property Inspection").

Subject to Buyer providing adequate information to The City of Seattle, Department of Construction and Land Use, Buyer shall have received written assurances satisfactory to Buyer in its sole discretion confirming that use of the building and improvements on the Property for parking on the basement and sub-basement floors, commercial retail or office space on the first floor and office space on the upper floors will be permitted by The City of Seattle without any requirements for major alterations.

Buyer shall have until 5:00 P.M. on the date forty (40) days after execution and delivery of this Agreement by both parties (the "Contingency Date") to satisfy or waive the contingencies set forth in this Section 4.1.3 and to give Seller notice that such contingencies have been satisfied or waived. If Buyer shall not satisfy or waive such contingencies and give Seller such notice on or before the Contingency Date, then this Agreement shall be automatically terminated and both parties shall be relieved and released of and from any and all further liability hereunder.

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**4.1.4. Conditions to Buyer's Obligation to Close.** In addition to any contingencies listed in Section 4.1.3 above, the obligation of Buyer to close hereunder shall be subject to the satisfaction of the following conditions precedent (all or any of which may be waived, in whole or in part by Buyer in writing):

**4.1.4.1. Representations and Warranties True at Closing.** The representations and warranties made by Seller in this Agreement shall be true in all material respects as of Closing with the same force and effect as though such representations and warranties had been made or given on and as of the Closing Date.

**4.1.4.2. Compliance with Agreement.** Seller shall have performed and complied with all its obligations under this Agreement which are to be performed or complied with by it prior to or at Closing.

**4.1.4.3. Damage to Property.** The physical condition of the Property, including without limitation, the HVAC, plumbing and electrical systems, shall be in the same condition as on the date of this Agreement, ordinary wear and tear excepted.

**4.1.4.4. Title to Personal Property.** There shall be no security interest, lien, encumbrance, charge or adverse claim affecting the personal property.

**4.1.4.5. Title Policy.** The Title Company shall be irrevocably committed to issue to Buyer the Title Policy, which Title Policy shall insure Buyer's good, marketable and indefeasible title to the Property in fee simple absolute, subject only to the Permitted Exceptions and standard printed exceptions contained in the ALTA extended coverage owner's policy form. The Title Policy shall include (i) protection (by endorsement or otherwise) against (A) violation of any covenants, conditions and restrictions of record and (B) zoning violations (including without limitation, parking requirements), and (ii) assurance (by endorsement or otherwise) that (A) all foundations and other improvements are within the lot lines, building restriction lines and applicable setback lines or otherwise not in violation thereof, (B) the Improvements do not encroach onto adjoining land or onto any easements, and (C) there are no encroachments or improvements from adjoining land onto the Land or the Improvements or any part thereof. If a survey is required, then Buyer, at its cost, will obtain a survey.

**4.1.4.6. Certificate of Seller.** Buyer shall have received a certificate of Seller, dated as of the date of Closing, to the effect that (i) the representations and warranties of Seller contained in this Agreement are true and correct as of Closing as if then again made; (ii) as of Closing, all covenants of Seller set forth in Section 5.4 have been performed; and (iii) as of Closing, all conditions set forth in this Section 4.1.4 have been satisfied (except for the condition set forth in Section 4.1.4.5 relating to the Title Policy).

**4.2. Conditions Precedent to Seller's Obligations.** The obligations of Seller hereunder shall be subject to the fulfillment and satisfaction of the following conditions prior to or on the Closing Date, which conditions are for the benefit of Seller and may be waived only in writing by Seller, as follows:

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**4.2.1. Compliance with Obligations.** Buyer shall have performed and complied in all material respects, at the appropriate times for such performance and compliance, with the obligations, covenants, and agreements under this Agreement to be performed by Buyer.

**4.2.2. Approval.** The legislative authority of The City of Seattle shall have approved this transaction by ordinance and the ordinance shall be in full force and effect.

**4.2.3. Conditions to Seller's Obligation to Close.** The obligation of Seller to close hereunder shall be subject to satisfaction of the condition (which may be waived, in whole or in part, by Seller in writing) that the representations and warranties made by Buyer in this Agreement shall be true in all material respects as of Closing with the same force and effect as though such representations and warranties had been made or given on and as of the date of the Closing.

**5. Representations, Warranties and Covenants.**

**5.1. By Seller Regarding Brokerage Fees & Commissions.** As additional consideration for this sale, Seller represents, warrants, and covenants that Seller shall indemnify and hold Buyer harmless from and against any liability for any commissions or fees payable to Craig Kinzer & Co. and to The Seneca Real Estate Group, Inc. in connection with the sale of the Property, but not to any other person or entity.

**5.2. By Seller Regarding Legal Capacity to Execute Agreement.** As of the Closing Date, the execution and delivery of this Agreement by Seller, and the consummation of the transaction contemplated hereby, will have been duly authorized by all necessary municipal action, including without limitation, all necessary approvals and grants of authority, on the part of Seller so that all of said documents are and will be validly executed and delivered and will be binding upon Seller; and Seller will have obtained all consents, approvals, authorizations, or orders as are required to permit Seller to execute and deliver this Agreement, and to consummate the transaction contemplated herein.

**5.3. By Seller Regarding the Property.** As a material inducement to Buyer entering into this Agreement, Seller represents and warrants to Buyer as follows:

**5.3.1. Title.** To the best of Seller's knowledge, there are no liens, encumbrances, leases, security interests, easements, rights-of-way, charges, adverse claims, management agreements, continuing contracts or other exceptions to title affecting title to the Property other than the King County Lease.

**5.3.2. Leases.** The only lease affecting any portion of the Property is the King County Lease. Except for the King County Lease, there are no other leases, tenancies, licenses or other agreements affecting the occupancy of the Property which would become an obligation of the Buyer after Closing. With respect to the King County Lease: (i) the King County Lease has been duly and validly executed and delivered by Seller or its predecessor in interest, as lessor, and (to the best of Seller's knowledge) the tenant; (ii) the King County Lease is in full force and effect, and constitutes the valid and binding legal obligation of Seller and (to the best of Seller's knowledge) the tenant, enforceable against them in accordance with its terms; (iii)

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the copy of the King County Lease previously delivered by Seller to Buyer is true, accurate and complete and is unmodified except as shown therein, and there are no understandings, oral or written, between the parties to the King County Lease which in any manner vary the obligations or rights of either party; (iv) the lease payment is as set forth in Section 4 of the King County Lease and Seller's obligation as to reimbursement of the lease payment to King County is as set forth in Section 4 of the King County Lease and there are no concessions, rebates, "free" or "reduced" rent periods, or obligations to provide tenant improvements or alterations (whether oral or written) of any kind whatsoever under the King County Lease which would have an effect on or after Closing other than Seller's obligation as to reimbursement of the lease payment to King County as set forth in Section 4 of the King County Lease; (v) King County is not entitled to any deduction or offset; (vi) Seller has performed all obligations required to be performed by it under the King County Lease; and (vii) there is no default by either party under the King County Lease and no event which, with notice or passage of time, or both, will mature into a default.

**5.3.3. No Disputes with Tenants.** To the best of Seller's knowledge, except as disclosed in Schedule 5.3.3 hereof, Seller is not engaged in any disputes with any tenants of the Property in connection with the tenant's lease or occupancy of the Property and no tenant has manifested any intention to engage in any dispute with Seller in connection with the tenant's lease or occupancy of the Property.

**5.3.4. No Defaults under Other Agreements.** To the best of Seller's knowledge, except as set forth in Schedule 5.3.4 hereof, neither Seller nor any other party is in default under any agreement affecting the Property, and no event exists which, with the passage of time or the giving of notice or both, will become a default thereunder on the part of Seller or (to the best of Seller's knowledge) any other party thereto. To the best of Seller's knowledge, Seller is not in default in complying with the terms and provisions of any of the covenants, conditions, restrictions, rights-of-way, easements or vault agreements affecting or relating to the Property.

**5.3.5. No Breach.** To the best of Seller's knowledge, except as set forth in Schedule 5.3.5 hereof, the execution, delivery and performance of this Agreement by Seller (i) does not and will not breach any statute or regulation of any governmental authority, including, but not limited to, applicable zoning laws and regulations; and (ii) does not and will not conflict with or result in a breach of or default under any mortgage or agreement which affects or purports to affect the Property.

**5.3.6. No Litigation or Adverse Events.** To the best of Seller's knowledge, except as set forth in Schedule 5.3.6 hereof, there are no investigations, actions, suits, proceedings or claims filed against or affecting Seller that directly relate to the Property, at law or in equity, before or by any governmental authority.

**5.3.7. Compliance with Laws.** To the best of Seller's knowledge, except as set forth in Schedule 5.3.7 hereof, the Property complies in all material respects with all applicable laws, ordinances, rules and regulations (including without limitation those relating to zoning and platting), and Seller has not been informed of a violation of any such laws, rules or regulations. To the best of Seller's knowledge, except as set forth in Schedule 5.3.7 hereof, all curb cuts and

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driveway entrances and exits to the Property are permanent and no special access or other permits are required to maintain same. To the best of Seller's knowledge, except as set forth in Schedule 5.3.7 hereof, all existing streets, other improvements and utility lines at the Property have been paid for and either enter the Property through adjoining public streets or in accordance with valid, irrevocable easements running to the benefit of the owner of the Property.

**5.3.8. Eminent Domain.** To the best of Seller's knowledge, except as set forth in Schedule 5.3.8 hereof, there is no existing, proposed or threatened eminent domain or similar proceeding, or private purchase in lieu of such a proceeding, which would affect the Property in any way whatsoever.

**5.3.9. Licenses, Permits, Certificates of Occupancy, Zoning, etc.** To the best of Seller's knowledge, except as set forth in Schedule 5.3.9 hereof, (i) all building permits for the Property, and all other notices, licenses, permits, certificates and authority required in connection with the construction, use, occupancy, and operation of the Property as an office building, have been obtained and are in full force and effect, and (ii) valid and final certificates of occupancy have been issued for the Property.

**5.3.10. Buyer's Acknowledgment of Opportunity to Discover Condition of Property Prior to Closing Date & Nonreliance on Communications From Seller.** The Buyer acknowledges that prior to the Closing Date, the Buyer has had adequate opportunity to make an independent investigation of the physical, structural, and environmental condition of the Property and its compliance with applicable fire and life safety laws and the Americans with Disabilities Act. Buyer has engaged one or more consultants, including but not limited to Prezant Associates, Inc., to investigate the environmental, physical and structural condition of the Property and its compliance with applicable fire and life safety laws and the Americans with Disabilities Act. In entering into this Agreement, the Buyer has not relied and does not rely on any communication from the Seller, or any of Seller's officers, employees, consultants or agents including but not limited to communications from Craig Kinzer & Company or The Seneca Real Estate Group, Inc. relating to the physical or structural condition of the Property, the Property's compliance with applicable fire and life safety laws and the Americans with Disabilities Act, or the presence or absence of any Hazardous Substance on the Property, other than the representations, warranties, covenants and agreements of Seller set forth in this Agreement.

**5.3.11. Service Contracts and Agreements.** All contracts of any kind, including without limitation, service contracts and agreements or elevator service contracts, relating to the management, leasing, operation, maintenance or repair of the Property other than the King County Lease will be terminated by Seller prior to Closing.

**5.3.12. No Electrical Interference.** To the best of Seller's knowledge, except as set forth in Schedule 5.3.12 hereof, Seller has not experienced any electrical interference from the electrical rectifier and other facilities maintained and operated by King County in the space covered by the King County Lease that has affected or disrupted the normal operations of Seller's computer, telephone and other systems.

**5.3.13. Non-Foreign Person.** Seller is not a "foreign person" as such term is defined in Section 1445(f) of the Internal Revenue Code of 1986, as amended.

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estimated unpaid cost to effect or complete such removal or compliance, and Buyer shall be required to accept title to the Property subject thereto. All such notices of violation noted or issued on or after Closing shall be the sole responsibility of Buyer. If the reasonably estimated aggregate cost to remove or comply with any notices of violation which Seller is required to remove or comply with pursuant to the provisions of this Section shall exceed ten percent (10%) of the Purchase Price, then Seller may elect to terminate this Agreement by giving Buyer notice to such effect.

**5.4.4. Representations and Warranties.** Seller shall use its best efforts to ensure that the representations and warranties of Seller contained in this Agreement are true and correct as of Closing. Seller shall promptly notify Buyer if any of such representations and warranties become untrue or incorrect prior to Closing.

**5.4.5. Operation of Property.** Seller agrees that:

**5.4.5.1.** Seller shall manage and operate the Property in the ordinary and usual manner and preserve its relations with all tenants, suppliers and others having business dealings with it except as required by Subsection 5.3.11 of this Agreement.

**5.4.5.2.** Seller shall maintain the Property in its present order and condition and make all necessary repairs and replacements consistent with a reasonably prudent maintenance and repair program, and shall deliver the Property on the Closing Date in substantially the same condition it is in on the date of this Agreement, reasonable wear and tear excepted. Without limiting the foregoing, no fixtures, equipment or other tangible personal property comprising the Property as set forth in Section 1 of this Agreement shall be removed from the Property prior to the Closing Date unless the same are replaced with similar items of at least equal quality and value. Within ten (10) days after the Closing Date, Seller shall repair to Buyer's reasonable satisfaction any damage resulting from the removal of any of the items set forth on Schedule 1 that Seller has the right to remove prior to the Closing Date. On the Closing Date Seller shall deliver possession of the Property to Buyer in broom clean condition and on or before the Closing Date Seller shall remove any personal property on the Property that is not included in the Property to be conveyed to Buyer pursuant to this Agreement.

**5.4.6. Consents.** Seller shall use its best efforts to obtain all consents and permissions related to the transactions contemplated by this Agreement and required under any mortgage or agreement affecting the Property.

**5.4.7. Delivery of Survey and Other Documents to Closing Agent.** Seller will deliver to the Closing Agent all instruments, documents and other materials in its possession and any existing surveys of the Property and will execute all affidavits, indemnities, releases and agreements, as reasonably necessary, in order to secure the issuance of the Title Policy.

**5.4.8. Leases.** Seller, without Buyer's prior written consent, which consent may be withheld in Buyer's sole discretion, shall not enter into any lease of space in the Property which is currently vacant; modify, extend or renew the King County Lease or any other existing lease of space in the Property; grant King County any right or option to expand, contract, modify, extend, renew or terminate the King County Lease; grant any existing tenant any right

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or option to expand, contract, modify, extend, renew or terminate any existing lease of space in the Property; or otherwise modify any existing lease of space in the Property.

**5.4.9. Management Agreements and Leasing Commissions.** On the Closing Date, there will be no contracts for the management, leasing, operation, maintenance or repair of the Property (other than any contract that has been entered into by Buyer), and there shall be no leasing commissions due or owing in connection with any of the Leases. Seller shall pay and discharge at Closing, in full, all obligations (past, present or future, actual or contingent) to pay any leasing commissions whatsoever with respect to leases of any portion of the Property that were entered into prior to the Closing Date.

**5.4.10. Insurance.** Buyer acknowledges that Seller self-insures the Property.

**5.4.11. New Contracts.** Without Buyer's prior written consent, Seller shall not become a party to any new licenses, leases, contracts or agreements of any kind relating to the Property, except such contracts or agreements as may be terminated at or prior to Closing without costs or expense to Buyer.

**5.4.12. Copies of Notices.** Promptly upon receipt, Seller shall provide Buyer with a copy of every material notice or correspondence item received from any tenant under any existing lease affecting the Property, including without limitation, the King County Lease, and every notice or correspondence item received from any governmental authority.

**5.5. By Seller Regarding Other Matters.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER MAKES NO REPRESENTATION OR WARRANTY AND SHALL NOT IN ANY WAY BE LIABLE FOR ANY REPRESENTATION OR WARRANTY WITH RESPECT TO: (i) THE DIMENSIONS, SIZE OR AREA OF THE PROPERTY; (ii) THE CONDITION OF THE PROPERTY OR ANY BUILDING, STRUCTURE OR IMPROVEMENTS THEREON OR THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE OR FOR ANY USE WHATSOEVER; (iii) ANY APPLICABLE ENVIRONMENTAL, BUILDING, ZONING OR FIRE LAWS OR REGULATIONS OR WITH RESPECT TO COMPLIANCE THEREWITH OR WITH RESPECT TO THE EXISTENCE OF OR COMPLIANCE WITH ANY REQUIRED PERMITS, IF ANY, OF ANY GOVERNMENTAL AGENCY; (iv) THE ABSENCE OF ASBESTOS OR ANY HAZARDOUS SUBSTANCE.

**5.6. By Buyer Regarding Brokerage Fees & Commissions.** At the time this Agreement is executed, Buyer warrants that it is not represented by an agent to whom a commission or fee is or will become due as a result of this transaction, other than Martin Smith Inc which may be paid a commission or fee by Buyer pursuant to a separate agreement between Buyer and Martin Smith Inc. If any such commission or fee is or becomes due to any person or entity claiming through, under or by reason of the conduct of Buyer in connection with the purchase and sale of the Property (other than Craig Kinzer & Company and The Seneca Real Estate Group, Inc. and Martin Smith Inc), then Buyer shall indemnify and hold Seller harmless from and against any liability for the same.

**5.7. By Buyer Regarding Legal Capacity to Execute Agreement.** The execution and delivery of this Agreement by Buyer, and the consummation of the transaction contemplated

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hereby, have been duly authorized and approved by or on behalf of Buyer so that all of said documents are and will be validly executed and delivered and will be binding upon Buyer; and Buyer has obtained all consents, approvals, authorizations, or orders as are required to permit Buyer to execute and deliver this Agreement, and to consummate the transaction contemplated herein.

**5.8. By Buyer Regarding Statements of Fact by Seller or Sellers' Agents & Extent of Buyer's Inspection of Property.** Buyer's decision to purchase the Property is not based upon any statement of fact by Seller or any officer, employee, agent or broker thereof including Craig Kinzer & Company and The Seneca Real Estate Group, Inc. concerning the Property unless such fact has been either (1) included as a contingency for the purchase, or (2) independently verified as true to the complete satisfaction of Buyer. Except for conditions and contingencies specifically noted elsewhere in this Agreement, Buyer accepts the Property in its present condition, as is, with all defects and without any warranty whatsoever, express or implied, as to its condition, environmental or otherwise (except as otherwise provided in this Agreement) or its suitability or sufficiency for the Buyer's intended uses or purposes, and notwithstanding the presence on the Property of (a) any Known Hazardous Substance as that term is defined in Subsection 5.13.2 and (b) any Hazardous Substance that was present in the soil or groundwater of the Property on the Closing Date, or was present between the soil of and the building on the Property on the Closing Date, the presence or possible presence of which is referenced in the Phase I report prepared for Buyer by Prezant, Inc. or any other consultant to the Buyer, or is otherwise known to the Buyer as of the Contingency Date or of which notice can be deemed to have been provided by any document provided by any consultant to the Buyer, or any document provided by the Seller to the Buyer or any other written disclosure by the Seller to the Buyer. BUYER ACKNOWLEDGES TO SELLER THAT BUYER HAS FULLY INSPECTED THE PROPERTY AND THAT IF BUYER SATISFIES OR WAIVES THE CONTINGENCIES SET FORTH IN SECTION 4.1.3 OF THIS AGREEMENT, THEN BUYER WILL ACCEPT TITLE TO THE PROPERTY IN ITS AS IS CONDITION SUBJECT TO ALL DEFECTS AND CONDITIONS, INCLUDING SUCH DEFECTS AND CONDITIONS, IF ANY, THAT CANNOT BE OBSERVED BY CASUAL INSPECTION.

**5.9. Representations, Warranties & Covenants Survive Closing.** All representations, warranties, and covenants by either Buyer or Seller, as set forth in this Agreement, shall survive the Closing Date and shall not be merged into any deed delivered by Seller to Buyer at closing.

**5.10 Responsibilities of Parties for Condition of Property.**

**5.10.1. Nonresponsibility of Seller for Condition of Certain Portions of Property On or After Closing Date.** As between the Seller and the Buyer, alone, the Seller shall not have any responsibility with respect to any change in the condition of the Property on or after the Closing Date, including without limitation, the demolition of any portion of the structure on the Property on or after the Closing Date or with respect to any act or omission of the Buyer or any of the Buyer's officers, employees, agents, contractors, lessees or invitees, or any other person or entity (other than the Seller or any of its officers, employees or agents) that occurs on or after the Closing Date and that relates, in any respect, to the Property; and Seller shall retain any statutory or common law rights, including, but not limited to, rights of contribution and subrogation, with respect to such acts and omissions; and the Buyer shall not

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look to the Seller for the assumption or fulfillment of any obligation, including without limitation, the payment of any sum of money to the Buyer or any other person or entity as a consequence of or in connection with any such activity, circumstance, condition, act or omission. This provision shall not constitute an indemnity agreement or apply to any change in the condition of the Property as a consequence of implementation of Subsections 5.10.4 and 5.10.5 of this Agreement.

**5.10.2. Nonresponsibility of Buyer for Acts or Omissions of Seller Prior to Closing Date.** As between the Seller and the Buyer, alone, the Buyer shall not have any responsibility with respect to, nor shall the release in Subsection 5.11.1 apply with respect to, any act or omission of the Seller or any of the Seller's officers, employees, agents, contractors, lessees, or invitees, or any other person or entity (other than the Buyer or any of its officers, employees or agents) that occurs prior to the Closing Date and that relates, in any respect, to the Property; and Buyer shall retain any statutory or common law rights, including, but not limited to, rights of contribution and subrogation, with respect to such acts and omissions; and the Seller shall not look to the Buyer for the assumption or fulfillment of any obligation, including without limitation, the payment of any sum of money to the Seller or any other person or entity (other than the Buyer or any of its officers, employees or agents) as a consequence of or in connection with any such act or omission. This provision shall not constitute an indemnity agreement.

**5.10.3. Buyer's Assumption of Responsibility for Specified Materials.** The parties acknowledge that the Seller and the Buyer have extensively discussed the possibility that certain materials described in this subsection may be found on the Property. As between the Seller and Buyer, alone, on and after the Closing Date, the Seller shall not be responsible or liable in any respect whatsoever, and the Buyer shall assume responsibility for and with respect to, all liability arising out of the presence, release, removal, remediation, and disposal on or after the Closing Date of, and any other act or omission on or after the Closing Date with respect to, any Known Hazardous Substance. For purposes of this subsection, the term "release" shall have the meaning set forth in RCW 70.105D.020 on the Closing Date.

**5.10.4. Environmental Treatment of Underground Storage Tank in Alley.** Seller, at its cost, shall be responsible for the removal and remediation of the underground storage tank in the alley on the westernmost edge of the Property including, but not limited to, any remediation of the Property required as a result of leakage from such underground storage tank including, but not limited to, any remediation of the Property required as a result of leakage from such underground storage tank. Within such period of time as may be reasonably agreed by the parties hereto and after the Seller's timely submission of all required applications for governmental permission to do so and the issuance of all governmental permits and other authorizations required for such action, the pipe from the underground storage tank to the building on the Property shall be severed and capped, and the underground storage tank shall be filled, removed, or otherwise properly remediated, all in accordance with all applicable laws and regulations. Buyer acknowledges that all or some of such required remediation activity by Seller may have to occur after the Closing Date. Buyer hereby grants permission to Seller to undertake such testing, sampling, remediation and other associated activities on the Property on and after the Closing Date as may be required of Seller in order to comply with applicable law or regulations; Provided, that all such physically invasive activity shall be undertaken by Seller

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only after Seller has provided to Buyer at least seven (7) days' prior notice of Seller's intent to commence physically invasive activity on the Property, which activity shall be generally described in such notice together with the anticipated commencement date and time thereof. Seller shall coordinate with Buyer's building manager any other access that may be required or desired by Seller for such purpose, which access shall not be unreasonably withheld or delayed by Buyer.

**5.10.5 Improvements to Create City Light Transformer Vault, Relocate Electrical Meters, and Modify Vault and Switch Room Cooling System.** On or by April 15, 1996, Seller, at no cost to Buyer, shall construct a transformer vault for the three (3) network transformers in the building on the Property (which vault shall be accessible only to City Light personnel); relocate to an area outside of the transformer vault, and reconnect (i) the existing electrical meters in the building on the Property that serve the leased premises described in the King County Lease and (ii) the existing meter for the remainder of the building on the Property; and, as determined by Seller to be necessary, modify the transformer cooling system to ensure that it will provide sufficient cooling for the newly constructed vault and the transformers located in the separate switch room.

**5.11. Release of Seller from Liability for Certain Hazardous Substances.**

**5.11.1. Release of Seller.** As of the Closing Date, the Buyer releases the Seller, and its officers, employees and agents, from any and all liability, including without limitation, claims, actions, lawsuits, demands, administrative proceedings, arbitration and other alternative dispute resolution mechanisms, liens, obligations, costs, response expenses, attorneys' fees and costs, litigation costs and expenses, expert and consulting fees and costs, fines, penalties, damages, consequential damages, and losses, arising on or after the Closing Date from, relating on or after the Closing Date to, or involving, on or after the Closing Date, the presence, release (as defined in RCW 70.105D.020 as of the Closing Date), containment, removal, remediation, or disposal of, or other act or omission with respect to, any Known Hazardous Substance as defined in Subsection 5.13.2, each occurring on or after the Closing Date.

**5.11.2. Binding Effect of Release.** To the extent allowed by law, the provisions of Section 5.11.1 of this Agreement shall be deemed to extend to and bind persons and entities in privity with the Buyer, including without limitation, Buyer's heirs, executors, personal representatives, successors, assigns, lessees, invitees, and all legal entities in which the Buyer or any of its directors, officers, shareholders, employees, or any combination thereof has an ownership interest equal to twenty-five percent (25%) or more, or any management responsibility with respect thereto.

**5.11.3. Release Specifically Bargained-For.** The Buyer and Seller acknowledge that the provisions of Section 5.11.1 of this Agreement have been specifically bargained for, and that the Seller would not be willing to sell the Property on the terms and conditions set forth in this Agreement without the Buyer's agreement to the provisions of Subsections 5.8, 5.10.1, 5.10.3, 5.11.1, 5.11.2, 5.11.3, 5.12, 5.13.1 and 5.13.2 hereof.

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**5.12. Grantee's Continuing Obligation to Include Release of City of Seattle and Environmental Conditions Covenant in Deeds Conveying All or Portions of Property.** The deed to transfer the Property from Seller to Buyer and any deed from Buyer to any transferee of Buyer to transfer all or any portion of the Property shall include the following provision:

"1. Except as noted in paragraph 2, below, the Grantee releases The City of Seattle, and its officers, employees and agents, from any and all claims, liabilities, damages, investigation and response costs and all other costs and expenses whatsoever, including without limitation consultants' and attorneys' fees and costs and consequential damages, arising on or after [insert Closing Date under the City Light Building Purchase & Sale Agreement between the City of Seattle & 1015 Third Avenue L.L.C.] from, relating on or after [insert Closing Date under the City Light Building Purchase & Sale Agreement between the City of Seattle & 1015 Third Avenue L.L.C.] to, or involving, on or after [insert Closing Date under the City Light Building Purchase & Sale Agreement between the City of Seattle & 1015 Third Avenue L.L.C.], the presence, release (as that term is defined in RCW 70.105D.020 on [insert Closing Date under the City Light Building Purchase & Sale Agreement between the City of Seattle & 1015 Third Avenue L.L.C.]), containment, removal, remediation, or disposal of, or other act or omission with respect to, any of the following substances on, from, or related to, the Property: asbestos that is part of the building and improvements comprising part of the Property on or after [insert Closing Date under the City Light Building Purchase & Sale Agreement between the City of Seattle & 1015 Third Avenue L.L.C.]; polychlorinated biphenyl in any fluorescent light fixture or electrical or mechanical equipment that is part of the building or an improvement comprising part of the Property on or after [insert Closing Date under the City Light Building Purchase & Sale Agreement between the City of Seattle & 1015 Third Avenue L.L.C.]; paint containing lead that is part of the building or an improvement comprising part of the Property on or after [insert Closing Date under the City Light Building Purchase & Sale Agreement between the City of Seattle & 1015 Third Avenue L.L.C.]; any chlorofluorocarbon in the air-conditioning system of the building or an improvement comprising part of the Property on or after [insert Closing Date under the City Light Building Purchase & Sale Agreement between the City of Seattle & 1015 Third Avenue L.L.C.], and whatever additional quantity of chlorofluorocarbons in the manufacturer's original container(s) is suitable for use in such air-conditioning system and is located on the Property on or after [insert Closing Date under the City Light Building Purchase & Sale Agreement between the City of Seattle & 1015 Third Avenue L.L.C.]; any Hazardous Substance (as defined in paragraph 3 below) that is contained in any equipment, fixture, furnishing, supply, or improvement on the Property on or after [insert Closing Date under the City Light Building Purchase & Sale Agreement between the City of Seattle & 1015 Third Avenue L.L.C.] that is commonly stored or used in the normal operation, repair or maintenance of a downtown Seattle office building (such as cleaning solvents or lubricating materials), but not any such Hazardous Substance that is exclusively used or stored in connection with an electrical utility's operations. The Grantee acknowledges that The City of Seattle has no responsibility with respect to the demolition of any portion of the structure on the Property, any change in the condition of the Property on or after [insert Closing Date under the City Light Building Purchase & Sale Agreement between the City of Seattle & 1015 Third Avenue L.L.C.] and the acts and omissions of the Grantee or others that

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occur on or after [insert Closing Date under the City Light Building Purchase & Sale Agreement between the City of Seattle & 1015 Third Avenue L.L.C.] and that relate to the Property, and the Grantee shall not look to The City of Seattle for the assumption or fulfillment of any obligation, including, without limitation, the payment of any sum of money to any person or entity, as a consequence of or in connection with any such activity, circumstance, condition, act or omission. This provision is intended to run with the land and to bind the Grantee, and its successors and assigns, and to inure to the benefit of The City of Seattle, and its successors and assigns.

"2. The Grantee's release of The City of Seattle and the other persons and estates named in paragraph 1 above does not extend to any Hazardous Substance, as defined in paragraph 3 below, that was present in the soil or groundwater of the Property prior to [insert Closing Date under the City Light Building Purchase & Sale Agreement between the City of Seattle & 1015 Third Avenue L.L.C.], was present between the soil of and the building on the Property prior to [insert Closing Date under the City Light Building Purchase & Sale Agreement between the City of Seattle & 1015 Third Avenue L.L.C.], or was released, emitted or otherwise discharged from or into the soil or groundwater of the Property prior to [insert Closing Date under the City Light Building Purchase & Sale Agreement between the City of Seattle & 1015 Third Avenue L.L.C.].

"3. For the purpose of this deed provision, the term "Hazardous Substance" means and includes any asbestos-containing material, polychlorinated biphenyl, flammable explosive, radioactive material, chemical known to cause cancer or reproductive toxicity, pollutant, effluent, contaminant or emission; and any hazardous, toxic or dangerous waste, substance or material, or contaminant, pollutant or chemical, known or unknown, defined or identified in any existing local, state or federal law, statute, code, ordinance, rule, regulation, guideline, decree or order relating to human health or the environment or environmental conditions, including but not limited to the Resource Conservation & Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq.; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq.; the Federal Water Pollution Control Act, 49 U.S.C. § 1801 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Washington Model Toxics Control Act ("MTCA"), RCW Ch. 70.105D; and the Washington Hazardous Waste Management Act, RCW Ch. 70.105; including all rules, regulations and guidelines currently promulgated under any and all of the same, including all existing amendments and supplements thereto, and any order or decree relating to or imposing liability or standards of conduct concerning, or prohibiting, limiting or regulating exposure to, any waste, material, substance, contaminant, pollutant or chemical."

**5.13. Definitions.** For the purpose of this Agreement,

**5.13.1. Definition of "Hazardous Substance."** The term "Hazardous Substance" means and includes any asbestos-containing material, polychlorinated biphenyl, flammable explosive, radioactive material, chemical known to cause cancer or reproductive toxicity, pollutant, effluent, contaminant or emission; and any hazardous, toxic or dangerous waste,

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substance or material, or contaminant, pollutant or chemical, known or unknown, defined or identified in any existing local, state or federal law, statute, code, ordinance, rule, regulation, guideline, decree or order relating to human health or the environment or environmental conditions, including but not limited to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.*; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 *et seq.*; the Federal Water Pollution Control Act, 49 U.S.C. § 1301 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Washington Model Toxics Control Act ("MTCA"), RCW Ch. 70.105D; and the Washington Hazardous Waste Management Act, RCW Ch. 70.105; including all rules, regulations and guidelines currently promulgated under any and all of the same, including all existing amendments and supplements thereto, and any order or decree relating to or imposing liability or standards of conduct concerning, or prohibiting, limiting or regulating exposure to, any waste, material, substance, contaminant, pollutant or chemical.

**5.13.2. Definition of "Known Hazardous Substance."** The term "Known Hazardous Substance" means any of the following substances on, from, or related to, the Property on or after the Closing Date: asbestos that is part of the building and improvements comprising part of the Property on or after the Closing Date; polychlorinated biphenyl in the fluorescent light fixtures and electrical and mechanical equipment that is part of the building and improvements comprising part of the Property on or after the Closing Date; paint containing lead that is part of the building and improvements comprising part of the Property on or after the Closing Date; any chlorofluorocarbon in the air-conditioning system of the building or an improvement comprising part of the Property on or after the Closing Date, and whatever additional quantity of chlorofluorocarbons in the manufacturer's original container(s) is suitable for use in such air-conditioning system and is located on the Property on or after the Closing Date; every Hazardous Substance contained in any equipment, fixture, furnishing, supply, or improvement on the Property on or after the Closing Date that is commonly used or stored in the normal operation, repair or maintenance of a downtown Seattle office building (such as cleaning solvents or lubricating materials), but not any Hazardous Substance that is exclusively used or stored in connection with an electrical utility's operations; and every other Hazardous Substance the presence or possible presence of which on the Property is referenced in the Phase I report prepared for Buyer by Prezant, Inc. or any other consultant to the Buyer, or is otherwise known to the Buyer as of the Contingency Date or of which notice can be deemed to have been provided by any document provided by any consultant to the Buyer, or any document provided by the Seller to the Buyer or any other written disclosure by the Seller to the Buyer, except a Hazardous Substance that was present in the soil or groundwater of the Property prior to the Closing Date, was present between the soil of and the building on the Property prior to the Closing Date or was released, emitted or otherwise discharged from or into the soil or groundwater of the Property prior to the Closing Date.

## **6. Closing.**

**6.1. Time for Closing.** This sale shall be closed in the offices of the Closing Agent on a date mutually agreeable to Seller and Buyer, but in any event not later than the day thirty (30) days after the Contingency Date. The Closing Date shall also be the termination date of this Agreement, unless it is otherwise extended by agreement of the parties. Buyer and Seller shall

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deposit in escrow all instruments, documents and funds necessary to complete the sale in accordance with this Agreement. As used in this Agreement, the term "Closing Date" means the date on which all appropriate documents are recorded and the proceeds of the sale are available for disbursement to Seller in accordance with this Agreement.

**6.2. Prorations, Closing Costs.** Taxes and other assessments, water, sewer, electricity, and other utility service charges constituting liens for the current year, and other items of direct expense relating to the Property and the prepaid rent under the King County Lease shall be adjusted and prorated between Seller and Buyer as of the Closing Date. Seller shall pay the premium for the Title Policy, the costs for clearing title (if any), and one-half of the escrow fee. Buyer shall pay the cost of recording the deed and one-half of the escrow fee and all miscellaneous charges customarily attributable to purchasers in similar transactions. Each party shall pay the attorneys' fees incurred by such party with respect to negotiating this Agreement and in consummating the transactions contemplated herein. If this Agreement is terminated prior to Closing, each party shall pay one-half of all of the title and escrow charges incurred.

### **6.3. Closing Documents.**

**6.3.1. Seller's Obligations at Closing.** At Closing, Seller shall execute and deliver to Buyer: (a) a special warranty deed conveying the Real Property free and clear of all liens, encumbrances, covenants, restrictions, conditions and adverse claims affecting title, except the Permitted Exceptions; (b) an assignment of leases, in the form of Exhibit A hereto, transferring to Buyer all of Seller's right, title and interest in and to the King County Lease and any other leases affecting the Property; (c) a bill of sale, in the form of Exhibit B hereto, transferring to Buyer good and marketable title to all tangible personal property comprising part of the Property, including the personal property listed in Section 3 hereof; (d) a general assignment, in the form of Exhibit C hereto, transferring to Buyer all of Seller's right, title and interest in and to those warranties, guaranties, licenses, permits and other intangible personal property, that Buyer elects to have assigned, if permitted by the terms thereof; (e) a counterpart executed real estate excise tax affidavit; (f) a Certificate of Non-Foreign Status that complies with the provisions of Section 1445(b)(2) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder; (g) all original Leases, assigned service contracts, plans and specifications, CAD drawings on magnetic media certificates, licenses, permits, and authorizations relating to the Property, and copies of such other records and files in Seller's possession and relating to the Property as Buyer may reasonably request; (h) a copy of the ordinance authorizing the sale of the Property to Buyer and the execution and delivery of the deed and all other documents and instruments to be executed by Seller pursuant to this Agreement, and (i) such other instruments as are reasonably necessary to consummate this purchase and sale transaction.

**6.3.2. Buyer's Obligations at Closing.** At Closing, and conditioned upon receipt of the items to be delivered as specified in Subsection 6.3.1 hereof, Buyer shall deliver to Seller through the Closing Agent, (a) the difference between the total purchase price and the Deposit; (b) a counterpart executed real estate excise tax affidavit; and (c) such other instruments as are reasonably necessary to consummate this purchase and sale transaction.

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**6.4. Possession.** Buyer shall be entitled to possession of the Property on the calendar day immediately following the Closing Date.

**6.5. Utilities.** Buyer shall make all arrangements required for the provision, delivery and continuation, from and after the Closing Date, of any and all utility services desired on and for the Property, and shall be responsible for payment of all charges associated with such provision, delivery and continuation and consumption of the same by Buyer or any other person, including without limitation, those for hook-ups, changes of billing name and address, and changes in service, provided, however, that Seller, at its cost, shall provide, when requested by Buyer, up to four (4) additional electrical meters for the Property at locations acceptable to Buyer. Buyer shall secure and have installed, at no expense to Seller, whatever meter bases, meter enclosures, wiring, conduit, and other required electrical equipment and connections are desired by Buyer on the Property that are in addition to or other than the modifications specified in Subsection 5.10.5 that are to be completed by Seller at its expense. Buyer shall contract for the delivery of all utility services solely in Buyer's own name.

**6.6. Risk of Loss.** Risk of loss or damage to the Property and the building and other improvements thereon by condemnation, or by fire or other casualty, from the date of this Agreement through the Closing Date shall be on Seller, and thereafter shall be on Buyer. If prior to the Closing Date, all or any part of the building and other improvements on the Property shall be taken by condemnation or be damaged or destroyed by fire or other casualty, then Buyer may elect to cancel this Agreement by giving Seller notice to such effect within thirty (30) days after Buyer shall have received notice of such occurrence, and, if Buyer shall so elect, both parties shall be relieved and released of and from any and all further liability hereunder and Seller shall return the Deposit to Buyer. If Buyer does not elect to so cancel, this Agreement shall remain in full force and effect and Seller shall, at the Closing, sell, transfer and assign to Buyer all of Seller's right, title and interest in and to any condemnation award or any insurance proceeds paid or payable in respect to such damage or destruction.

**7. Default.** If Seller's conditions precedent are not satisfied or waived, and, accordingly, Seller is unable to close this transaction, then this Agreement shall be terminated as of the Closing Date, the Deposit shall be refunded to Buyer, and both parties shall be relieved and released of and from any and all further liability hereunder. If Seller's conditions precedent are satisfied or waived and Seller fails or refuses to close this transaction through no fault of Buyer, then, at Buyer's election, either (i) the Deposit shall be refunded to Buyer, or (ii) Buyer may seek specific performance of this Agreement or damages. If Buyer's conditions precedent are not satisfied or waived, and, accordingly, Buyer is unable to close this transaction, then this Agreement shall be terminated as of the Closing Date, the Deposit shall be refunded to Buyer, and both parties shall be relieved and released of and from any and all further liability hereunder. If title to the Property is insurable subject only to the Permitted Exceptions, Buyer's conditions precedent are satisfied or waived, and Buyer fails or refuses to close this transaction through no fault of Seller, then Seller shall retain the Deposit provided pursuant to Section 2.2 and, at Seller's election, Seller may seek specific performance of this Agreement or damages.

**8. Notices.** All notices required or permitted hereunder shall be in writing and shall either be delivered in person or sent by Federal Express or Federal Express Courier, addressed to

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Seller or Buyer at the address set forth below or at such other address as each party may specify for itself by notice to the other:

If to Seller: Real Estate Services  
City Light Department  
The City of Seattle  
700 Fifth Avenue, 28th Floor  
Seattle, Washington 98104  
Attn: Steve Hagen

with a copy to:

City Attorney  
Seattle Law Department  
10th Floor, Municipal Building  
600 Fourth Avenue  
Seattle, Washington 98104  
Attn: Gordon B. Davidson, Asst. City Attorney

If to Buyer: 1015 Third Avenue L.L.C.  
c/o Martin Smith Inc  
615 Second Avenue, Suite 400  
Seattle, Washington 98104  
Attn: Gregory B. Smith  
and

1015 Third Avenue L.L.C.  
c/o Martin Smith Inc  
615 Second Avenue, Suite 400  
Seattle, Washington 98104  
Attn: H. Martin Smith, III

with a copy to:

Williams, Kastner & Gibbs  
601 Union Street, Suite 4100  
Seattle, Washington 98101  
Attn: Richard D. Thaler

Notices shall be deemed to have been given upon the earlier of actual receipt, as evidenced by the deliverer's affidavit, the recipient's acknowledgment of receipt, or the courier's or Federal Express receipt; and in the event of attempted delivery during normal business hours at the proper address by an agent of a party or by Federal Express but refused acceptance, shall be deemed to have been given upon attempted delivery, as evidenced by an affidavit of inability to deliver stating the time, date, place, and manner in which such delivery was attempted and the manner in which such delivery was refused. Notice of change of address shall be given by written notice in the manner detailed above.

9. **Amendments.** This Agreement may be modified only by a written document executed by Buyer and Seller subsequent to the date hereof.

10. **Waiver.** Any waiver under this Agreement must be in writing. A waiver of any right or remedy in the event of a default shall not constitute a waiver of such right or remedy in the event of any subsequent default. No writing other than a document signed by the Seller's Superintendent of City Light specifically so stating that it is a waiver shall constitute a waiver by Seller of any particular breach or default by Buyer, nor shall such a writing waive Buyer's failure to fully comply with any other term or condition of this Agreement, irrespective of any knowledge that any officer or employee of Seller may have of such breach, default, or noncompliance.

11. **Binding Effect.** This Agreement is for the benefit of, and binding upon, Buyer and Seller and their respective heirs, executors, personal representatives, successors and assigns.

12. **Agreement Not Binding Until Fully Executed.** The Agreement shall not be binding upon Buyer until executed by both Seller and Buyer.

13. **Square Footage.** Any square footage as to the Property or any building or other improvement thereon referred to by Seller or any real estate agent in marketing the Property is understood to be an approximation and is not intended to be relied upon by Buyer to determine the fitness or value of the Property. Buyer has personally observed the Property and has reached its own conclusions as to the adequacy and acceptability of the size of the Property based upon said personal inspection.

14. **Time of Essence.** Time is specifically declared to be of the essence with respect to this Agreement and of all acts required to be done and performed by either and both of the parties hereto, including but not limited to the proper tender of all amounts of money required by the terms hereof to be paid.

15. **Invalidity or Unenforceability of Provisions.** The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision.

16. **Applicable Law & Venue.** This Agreement shall be construed under the Law of the State of Washington. The venue for any action brought to enforce or interpret this Agreement shall be in the Superior Court of the State of Washington for King County.

17. **Disclosure.** At the signing of this Agreement, Craig Kinzer & Co. and The Seneca Real Estate Group, Inc. represented Seller with respect to matters pertaining to the Property. Each party signing this Agreement confirms that prior oral and/or written disclosure of such relationship was provided to such party in this transaction. 1015 Third Avenue L.L.C. is a Washington limited liability company composed of, among others, Jeffrey A. Roush, H. Martin Smith, III and Gregory B. Smith. Jeffrey A. Roush, H. Martin Smith, III and Gregory B. Smith hereby disclose that they are licensed real estate agents in the State of Washington.

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

18. **Completion of Schedules.** All Schedules and Exhibits to this Agreement shall be completed on or before the tenth (10th) day after the date of execution of this Agreement by both parties.

19. **Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5:00 p.m., Pacific time.

20. **Attorneys' Fees.** If, in connection with this Agreement, (a) any lawsuit or arbitration arises between the Buyer and Seller, or (b) any counterclaim, cross-claim or other similar claim is asserted between Buyer and Seller in a lawsuit or arbitration, including but not limited to a lawsuit or arbitration relative to the presence of a Hazardous Substance on the Property, the substantially prevailing party therein (as between Buyer and Seller) shall be entitled to recover from the substantially losing party the substantially prevailing party's reasonable costs and expenses, including reasonable attorneys' fees, incurred in connection therewith, in preparation therefor and on appeal therefrom, which amounts shall be included in any judgment entered therein. For the purpose of implementing this Agreement, the fees of the attorney(s) and paralegal(s) that may be due to Seller hereunder shall be those chargeable by attorney(s) and paralegal(s) in private practice in a downtown Seattle law firm comparable in size to the Seattle Law Department who have been working as such for approximately the same period of time as the professional(s) representing Seller have.

21. **Receipt of Copy of Agreement.** Each of the parties hereto acknowledges that it has received a copy of this Agreement.

22. **Entire, Negotiated Agreement.** This is the entire agreement of Buyer and Seller with respect to the Property and supersedes all prior agreements between them, written or oral, regarding the specific subject matter hereof. The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

DATED the date first above written and signed in duplicate original.

**SELLER:**

**BUYER:**

**THE CITY OF SEATTLE**

**1015 THIRD AVENUE L.L.C.**

By: \_\_\_\_\_  
Gary Zarker, Superintendent  
City Light Department

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss. (SELLER'S ACKNOWLEDGMENT)  
THE COUNTY OF KING )

On this \_\_\_ day of \_\_\_\_\_, 1996, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Gary Zarker, to me known to be the Superintendent of the City Light Department of The City of Seattle, who on oath stated that he executed the foregoing agreement, and acknowledged said agreement to be the free and voluntary act and deed of The City of Seattle for the uses and purposes therein mentioned, and that he was authorized to execute said agreement for and on behalf of The City of Seattle.

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

\_\_\_\_\_  
(Signature) (Print or type name of notary)  
Notary Public in and for the State Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss. (BUYER'S ACKNOWLEDGMENT)  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1996, before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the \_\_\_\_\_ and \_\_\_\_\_ of 1015 Third Avenue L.L.C., who stated, on oath, that \_\_\_\_\_ executed the within and foregoing agreement, and acknowledged said agreement to be the free and voluntary act and deed of 1015 Third Avenue L.L.C. for the uses and purposes therein set forth, and that \_\_\_\_\_ was/were authorized to execute said agreement for and on behalf of 1015 Third Avenue L.L.C.

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

\_\_\_\_\_  
(Signature) (Print or type name of notary)  
Notary Public in and for the State Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

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RECEIVED OMP

JAN 08 1996



City of Seattle  
Department of Administrative Services

Kenneth J. Nakatsu, Director  
Norman B. Rice, Mayor

January 5, 1996

Honorable Jan Drago, President  
Seattle City Council

VIA: Tom Tierney, Director  
Office of Management and Planning

Dear Councilmember Drago:

SUBJECT: Sale of the City Light Building

The Department of Administrative Services (DAS) and the City Light Department request approval of the attached ordinance, authorizing sale of the City Light Building in accordance with the Purchase and Sale Agreement, which is referenced in and attached to the ordinance.

For more than a year, DAS has been working with City Light to accomplish the first steps in the City's long-range downtown plan, through City Light's move to Key Tower and the disposal of the vacated City Light Building. In late 1994, the City executed a lease to relocate City Light to Key Tower and that relocation will be completed this month.

In late 1995, we concluded that the downtown real estate market had improved to the point that the City Light Building would be a marketable property. Although the building is encumbered by a lease until 2003 with Metro for the trolley rectifier vault and, as with most buildings of its age, contains identified hazardous materials, it does have potential for generating financial returns.

In October, we circulated a request for proposals for purchase of the property. Proposals were received on December 1 and we immediately began negotiations with the highest proposer. Those negotiations resulted in a fair market price for the building and a reasonable limitation on the City's liability for environmental problems. The attached Purchase and Sale Agreement details the terms of the sale, which is contingent upon Council approval.

We respectfully request your approval of the attached legislation at the earliest opportunity. If you have any questions regarding the legislation or terms and conditions of the sale, please contact Mary Pearson, DAS Property Manager, at 4-0407.

Sincerely,

Ken Nakatsu, Director  
Department of Administrative Services

Gary Zarker, Superintendent  
City Light Department

KN:mp:sat

Attachment

An equal employment opportunity / affirmative action employer

City of Seattle, Department of Administrative Services, 12th Floor Alaskan Building, 618 Second Avenue, Seattle, Washington 98104-2214 (206) 386-1234

Printed on Recycled Paper

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ROUTING SLIP FOR REQUEST FOR LEGISLATIVE ACTION

Originating Department: Administrative Services

Council Sponsor: \_\_\_\_\_

Date: January 5, 1996

Subject: AN ORDINANCE authorizing the sale of property at 1015 Third Avenue, commonly known as the City Light Building.

\_\_\_\_\_

Date  
Received

Date  
Forwarded

OMB: \_\_\_\_\_

Law: \_\_\_\_\_

Legislation should be routed in the order listed.

ORD.RT  
E Disk

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ORDINANCE \_\_\_\_\_

AN ORDINANCE authorizing the sale of property at 1015 Third Avenue, commonly known as the City Light Building.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of City Light is hereby authorized to sell the real property located at 1015 Third Avenue, which is commonly known as the City Light Building, and which is described as follows:

Lots 2, 3, 6 and 7, Block 11, Boren and Denny's Addition, as recorded in Volume 1 of Plats, Page 27, Records of King County Washington, except portion condemned for street.

Section 2. Said sale shall be in accordance with the Purchase and Sale Agreement negotiated with the proposed buyer and approved by the Law Department, which agreement is attached hereto and labeled "Exhibit A."

Section 3. The Superintendent of City Light is authorized to accept, on closing, either all cash or funds wired to such bank and account as may be specified by the City's Finance Director, and to execute a deed to complete the sale authorized in Section 1, upon payment of the consideration therefor.

Section 4. The proceeds of the sale authorized by Section 1 hereof shall be deposited in the Light Fund.

Section 5. Any act pursuant to the authority of this ordinance and prior to its effective date is hereby ratified and confirmed.

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Section 6. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 1996,  
and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

\_\_\_\_\_  
President of the City Council

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

\_\_\_\_\_  
Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

\_\_\_\_\_  
City Clerk

ref: FacSvcs Ord/Agrmt Disk No. 5 (CL.DOC)

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TIME AND DATE STAMP

**SPONSORSHIP**

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

*Margaret Peggler*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FOR CITY COUNCIL PRESIDENT USE ONLY**

COMMITTEE(S) REFERRED TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
PRESIDENT'S SIGNATURE

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STATE OF WASHINGTON - KING COUNTY

64613 City of Seattle, City Clerk

-SS-

No. ORD IN FULL

City of Seattle ORDINANCE 118009

of Publication

AN ORDINANCE authorizing the sale of property at 1015 Third Avenue, commonly known as the City Light Building.

WHEREAS, the City Light Building's occupants have been relocated to leased space in the Key Tower; and

WHEREAS, the City Light Building, which was originally acquired for public utility purposes, is no longer required for providing continued public utility service and is, accordingly, surplus to the City's needs; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of City Light is hereby authorized to sell, pursuant to R.C.W. 35.94.040, the real property located at 1015 Third Avenue, which is commonly known as the City Light Building, and which is described as follows:

Lots 2, 3, 6 and 7, Block 11, Boren and Denny's Addition, as recorded in Volume 1 of Plats, Page 27, Records of King County Washington, except portion condemned for street.

Section 2. Said sale shall be in accordance with the terms and conditions specified in the Purchase and Sale Agreement negotiated with the proposed buyer and approved by the Law Department, which agreement is attached hereto and labeled "Exhibit A."

Section 3. The Superintendent of City Light is authorized to accept, on closing, either all cash or funds wired to such bank and account as may be specified by the City's Finance Director, and to execute a deed to complete the sale authorized in Section 1, upon payment of the consideration therefor.

Section 4. The proceeds of the sale authorized by Section 1 hereof, namely, the sum of Two Million Six Hundred Thousand Dollars less Closing Costs, shall be deposited in the Light Fund.

Section 5. Any act pursuant to the authority of this ordinance and prior to its effective date is hereby ratified and confirmed.

Section 6. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 5th day of February, 1996, and signed by me in open session in authentication of its passage this 5th day of February, 1996.

JAN DRAGO, President of the City Council, Approved by me this 17th day of February, 1996. Mayor (acting).

JAN DRAGO, Filed by me this 14th day of February, 1996. (Seal) JUDITH E. PIPPIN, City Clerk.

Publication ordered by JUDITH PIPPIN, City Clerk. Date of official publication in Daily Journal of Commerce, Seattle, February 16, 1996. 2/16(64613)

igned, on 02/16/96, states that he is an of The Daily Journal of Commerce, a newspaper is a legal newspaper of general and has been for more than six months tion hereinafter referred to, published in auously as a daily newspaper in Seattle, and it is now and during all of said time -maintained at the aforesaid place of aper. The Daily Journal of Commerce ce, 1941, approved as a legal newspaper King County.

t form annexed, was published in regular nal of Commerce, which was regularly ers during the below stated period. The

ee charged for the foregoing publication is , which amount has been paid in full.

Subscribed and sworn to before me on

Notary Public for the State of Washington, residing in Seattle

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# City of Seattle

Executive Department—Office of Management and Planning

Thomas M. Tierney, Director  
Norman B. Rice, Mayor

January 8, 1996

The Honorable Mark Sidran  
City Attorney  
City of Seattle

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING DEPARTMENT      Administrative Services/City Light

SUBJECT:                      AN ORDINANCE authorizing the sale of property at 1015 Third Avenue, commonly known as the City Light Building.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMP. Any specific questions regarding the legislation can be directed to Monica Power at 684-8076.

Sincerely,

Norman B. Rice  
Mayor

by



Tom Tierney, Director

legis:power52

Enclosure



*City  
9/21/1996*

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