

Ordinance No. 119518

(16)

Council Bill No. 112768

AN ORDINANCE relating to the sale of land for housing development in the I-90 Redevelopment Project area; authorizing the sale of Dearborn-Hiawatha Parcel 4b to HomeSight; authorizing the Director of Office of Housing to execute, deliver, and administer the contract for sale of land and to execute and deliver a deed; authorizing the City to accept fee interest upon delivery of a quit claim deed and Seattle Public Utilities to assume jurisdiction of a 14 foot wide parcel abutting the alley occupied by the Cedar River Pipeline No. 3; and ratifying and confirming prior acts.

The City of Seattle - Legislative Department  
Council Bill/Ordinance sponsored by: \_\_\_\_\_ ST

Committee Action:

(E) (W) (S)  
PASS As Amended 4-0

7-19-99 Full Council

CF No. \_\_\_\_\_

Date Introduced: JUL 12 1999	
Date 1st Referred: JUL 12 1999	To: (committee) Housing, Human Services and Civil Committee
Date Re - Referred:	To: (committee)
Date Re - Referred:	To: (committee)
Date of Final Passage: 7-19-99	Full Council Vote: 9-0
Date Presented to Mayor: 7-19-99	Date Approved:
Date Returned to City Clerk: JUL 26 1999	Date Published: T.O. <input checked="" type="checkbox"/> F.T. <input checked="" type="checkbox"/> 6 pages
Date Vetoed by Mayor:	Date Veto Published:
Date Passed Over Veto:	Veto Sustained:

This file is complete and ready for presentation to Full Council. C

*Pat Stember*

*Law Department*

Law Dept. Review

OMP Review

City Clerk Review

(16)

# The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: STEINBRUECK  
Councilmember

*(E) (D)*  
*PASS AS Amended*  
*4-0* *(W) (S)*

## Committee Action:

7-19-99 Full Council Passed 9-0

This file is complete and ready for presentation to Full Council. Committee: \_\_\_\_\_  
(initial/date)

*Pat Steinbrueck*

*Law Department*

Law Dept. Review

OMP  
Review

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City Clerk  
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Human and Civil Committee
T.D. <input checked="" type="checkbox"/> <i>6 pages</i>
F.I. <input type="checkbox"/>

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

ORDINANCE 119542

AN ORDINANCE relating to the sale of land for housing development in the I-90 Redevelopment Project area; authorizing the sale of Dearborn-Hiawatha Parcel 4b to HomeSight; authorizing the Director of Office of Housing to execute, deliver, and administer the contract for sale of land and to execute and deliver a deed; authorizing the City to accept fee interest upon delivery of a quit claim deed and Seattle Public Utilities to assume jurisdiction of a 14 foot wide parcel abutting the alley occupied by the Cedar River Pipeline No. 3; and ratifying and confirming prior acts.

WHEREAS, the City obtained ownership of certain parcels known as the "Dearborn-Hiawatha Properties" from the State of Washington, Seattle Housing Authority, King County, and private owners; and

WHEREAS, the City owns, maintains, and wishes to protect the Cedar River Transmission Pipeline that runs along the platted alleyway ("Alley") from the corner of Hiawatha Place South and South Charles Street to the corner of South Dearborn Street and Davis Place South, to the west of the subject property; and

WHEREAS, the City adopted the I-90 Area Development Policies on January 23, 1989, by Resolution No. 27901, which Policies were amended on December 11, 1995, by resolution 29258; and

WHEREAS, the City's Ordinance No. 117612, passed on April 24, 1995, directed the Department of Neighborhoods, in coordination with the Department of Housing and Human Services and the Office of Economic Development and in consultation with the Jackson Place Community Council, to proceed with the planning for the redevelopment of the combined residential, commercial and industrial parcels known as "Dearborn-Hiawatha" and that City Council would consider a proposed redevelopment plan which may not be consistent with the I-90 Area Development Policies; and

WHEREAS, the City desires to promote affordable homeownership and economic development in the Jackson Place Community, consistent with the City of Seattle Comprehensive Plan

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5 adopted July 25, 1994 and the 1999-2000 Consolidated Plan adopted September 21, 1998, as  
6 amended February 8, 1999; and

7 WHEREAS, the City Council by Resolution No. 29707 adopted March 2, 1998, approved the  
8 issuance of the Request for Developer Qualifications and Preliminary Proposals dated March 16,  
9 1998 (the "RDQ"), which specifies the goals and process for disposition of the Dearborn-  
10 Hiawatha Properties; and

11 WHEREAS, the City has conducted a competitive process through the RDQ; and

12 WHEREAS, in response to the RDQ, HomeSight, in conjunction with Icon Architecture and  
13 Seattle Cohousing, which are not parties to this property sale, submitted a proposal dated July 6,  
14 1998, to acquire Dearborn-Hiawatha Parcel 4b and construct thereon a mix of townhouses and  
15 single family homes; and

16 WHEREAS, the Director of the City's Department of Neighborhoods has determined that the  
17 Proposal is complete and responsive to the RDQ; the Proposal has been reviewed and evaluated  
18 by the City's Developer Selection Committee; and the Mayor has recommended that the  
19 Proposal be accepted; and

20 WHEREAS, the City Council passed Ordinance 119440 transferring jurisdiction of the  
21 Dearborn-Hiawatha property and the authority for the sale of the designated parcels from the  
22 Department of Neighborhoods to the Office of Housing;

23 WHEREAS, the payment for the transfer of the property to HomeSight will be in the amount of  
24 the market value, less a discount in exchange for the public benefit provided by HomeSight of  
25 financial assistance in the form of a second mortgage offered to six first-time home buyers  
26 earning less than or equal to 80% of median income who will purchase townhomes on this  
property, and such sale proceeds will be transferred to the Program Income Revenue Account in  
Fund 17810;

WHEREAS, HomeSight wishes to assume no control or interest in the 14 foot wide area  
immediately abutting the eastern edge of the Alley, and wishes to release and quitclaim to the  
City any interest it may acquire in that property;

WHEREAS, City is willing to accept the fee interest in the 14 foot parcel east of the Alley which  
will be transferred to the jurisdiction of Seattle Public Utilities;

NOW THEREFORE,

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6 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

7           Section 1. The sale by the City of Seattle to HomeSight of the parcel of real property  
8 (the "Property") legally described as follows:

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10 **Lot 1 through 11, inclusive, All in Block 2, Dearborn Street Addition to the City of Seattle,**  
11 **according to the plat thereof recorded in Volume 15 of Plats, page 19, in King County,**  
**Washington.**

12 **Subject to an easement over that certain strip of land fourteen (14) feet in width**  
13 **described as follows :**

14 **That portion of Lots 1 through 7, inclusive, Block 2, Dearborn Street Addition to the City**  
15 **of Seattle, according to the plat thereof recorded in Volume 15 of Plats, page 19, Records**  
16 **of King County, Washington, lying westerly of a line parallel with and 30 feet easterly of**  
17 **the most Easterly lines of Lots 10, 7 and 8, and of said Most Easterly lines produced, all**  
18 **in Block 2, Rainier Boulevard Addition to the City of Seattle, according to the plat thereof**  
19 **recorded in Volume 9 of Plats, page 59, Records of King County, Washington;**

20 **together with that portion, if any, of Government Lot 13 in Section 4, Township 24 North,**  
21 **Range 4 East, W.M., lying southerly of the South margin of South Dearborn Street,**  
22 **northerly of the North margin of South Charles Street, westerly of the West line of said**  
23 **Block 2, Dearborn Street Addition to the City of Seattle, and easterly of the East margin**  
24 **of the alley lying east of said Block 2, Rainier Boulevard Addition to the City of Seattle,**  
25 **as said alley was platted in said plat of Rainier Boulevard Addition to the City of Seattle;**

26 **situate in the City of Seattle, County of King, State of Washington.**

for the purpose of housing development, for the price of One Hundred Thirteen Thousand Five  
Hundred Dollars (\$113,500.00), as provided in the form of the Purchase and Sale Agreement  
attached hereto as Attachment A, is hereby authorized.

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5 Section 2. The Director of the Office of Housing ("Director") is hereby authorized to  
6 execute, deliver and administer for and on behalf of the City of Seattle a "Purchase and Sale  
7 Agreement" ("Contract") with HomeSight for the sale of the Property, in substantially the form  
8 attached hereto as Attachment A, with any modifications approved by such Director consistent  
9 with the terms of this ordinance. In order to carry out the Contract for and on behalf of the City,  
10 the Mayor or Director is authorized to execute a Statutory Warranty Deed for the Property in  
11 substantially the form attached hereto as Exhibit VIII to the Contract, and upon satisfaction of the  
12 conditions precedent under the Contract, the Director is authorized to cause the deed to be  
13 delivered to the purchaser.  
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17 Section 3. The Director is hereby authorized, for and on behalf of the City, to approve  
18 construction plans and changes thereto as being in conformity with the Contract and the  
19 Hiawatha Place Request for Developer Qualifications and Proposals, to grant such consents and  
20 approvals as she shall deem appropriate to carry out the intent of this ordinance; and to issue  
21 appropriate certification when improvements contemplated in the Contract have been completed.  
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24 Section 4. Payments made from escrow at closing, from funds deposited by or  
25 on behalf of HomeSight, of prorated assessments and other costs payable by the City at closing  
26 pursuant to the terms of the Contract, shall be credited toward payment of the purchase price of  
the Property. Net proceeds from the sale, less costs of closing, final property clean-up, the

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5 environmental assessment report, and other incidental expenses associated with the sale of the  
6 above-referenced parcel shall be deposited in the Program Income Revenue Account - Fund  
7 17810.

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10 Section 5. The City, upon recording and delivery of the Quitclaim Deed (Exhibit IX to  
11 the Contract), is authorized to accept the fee interest in the 14 foot wide parcel immediately east  
12 of the Alley described in the Quitclaim Deed, and Seattle Public Utilities is authorized to assume  
13 jurisdiction of the 14 foot strip for consideration of sixty eight thousand dollars (\$68,000.00)  
14 payable from the Water Fund to the Program Income Revenue Account - Fund 17810.

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17 Section 6. Any act pursuant to the authority and prior to the effective date of this  
18 ordinance is hereby ratified and confirmed.

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

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25 Passed by the City Council the 19<sup>th</sup> day of July, 1999, and signed by me in  
26 open session in authentication of its passage this 19<sup>th</sup> day of July, 1999.

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Joe Amah.  
President of the City Council

Approved by me this 27<sup>th</sup> day of July, 1999.

Paul Schell  
Paul Schell, Mayor

Filed by me this 26<sup>th</sup> day of July, 1999.

Carrie Donfeld  
acting City Clerk

(Seal)

Attachment A: Purchase and Sale Agreement with Exhibits

# DAVIS PLACE TOWNHOMES

## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the "Agreement") is made as of \_\_\_\_\_ 1999, by and between the City of Seattle, a municipal corporation of the State of Washington (the "City"), and HomeSight, a Washington not-for-profit corporation, ("Purchaser"), whose address is 3405 South Alaska Street, Seattle, WA 98118.

**WITNESSETH:**

WHEREAS, the City obtained ownership of certain parcels known as the "Dearborn-Hiawatha Properties" from the State of Washington, the Seattle Housing Authority, King County, and private individuals ; and

WHEREAS, on January 23, 1989, by Resolution No. 27901, the City adopted the I-90 Area Development Policies which Policies were amended on December 11, 1995, by Resolution 29258; and

WHEREAS, the City's Ordinance No. 117612 dated April 24, 1995, directed the Department of Neighborhoods, in coordination with the Department of Housing and Human Services and the Office of Economic Development and in consultation with the Jackson Place Community Council, to proceed with the planning for the redevelopment of the combined residential, commercial and industrial parcels comprising the Dearborn-Hiawatha Properties; and

WHEREAS, the City desires to promote affordable home ownership and economic development in the Jackson Place Community, consistent with the City of Seattle Comprehensive Plan adopted July 25, 1994 and 1999-2000 Consolidated Plan adopted Sep 21, 1998, and amended Feb 8, 1999; and

WHEREAS, to provide flexibility in the planning process, the Seattle City Council would consider a proposed redevelopment plan which may not be consistent with currently approved I-90 Area Development Policies but reflects the Jackson Place Community's vision for these properties; and

WHEREAS, by Resolution 29707 dated March 2, 1998, the Seattle City Council approved the issuance of the Request for Developer Qualifications and Preliminary Proposals dated March 16, 1998 (the "RDQ"), which specified the goals and process for disposition of the Dearborn-Hiawatha Properties; and

WHEREAS, the City has conducted a competitive process through the RDQ; and

WHEREAS, in response to the RDQ, Purchaser, in conjunction with Seattle Cohousing and Icon Architecture, Ltd, which are not a party to this Agreement, submitted a proposal dated July 6, 1998 (which is incorporated herein by this reference and shall be hereinafter referred to, with any modifications or additions to such proposal that shall be approved in writing by the City, as the "Proposal") to acquire the Property (defined below) and construct thereon a residential complex of townhomes and single family homes; and

WHEREAS, the Director of the Department of Neighborhoods of the City has determined that the Proposal is complete and responsive to the RDQ; the Proposal has been reviewed and evaluated by the City's Developer Selection Committee; and the Mayor has recommended that the Proposal be accepted; and

WHEREAS, the City Council passed Ordinance 119440 on April 19, 1999 transferring jurisdiction of the Dearborn-Hiawatha property and the authority for the sale of the designated parcels from the Department of Neighborhoods to the Office of Housing; and

WHEREAS, by Ordinance \_\_\_\_\_, dated \_\_\_\_\_, the Seattle City Council accepted the Mayor's recommendation that the Proposal to purchase and develop the Property be accepted; authorized the Director to execute, deliver and administer a real estate purchase and sale agreement, which is this Agreement; and designated the disposition of sales proceeds; and

WHEREAS, the City believes that the redevelopment of the Property pursuant to this Agreement, and the fulfillment, generally, of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable federal, state, and local laws and requirements under which the redevelopment project has been undertaken; and

WHEREAS, Purchaser has submitted to the City the Proposal, which contains the proposed initial plans ("Conceptual Design") describing the redevelopment project and its architectural character, and the relationship to the surrounding environment of the Improvements to be developed on the Property; which Conceptual Design was approved by the Department of Neighborhoods Director in August, 1998; and

WHEREAS, Purchaser has subsequently revised and modified the Conceptual Design and resubmitted plans for review and approval by the Director of the Office of Housing (herein "Director"). On July 6, 1999 the Director approved these revised plans which are attached hereto in their current, approved form as Exhibit V and shall be referred to, as attached or as modified and approved as provided in this Agreement, as the Conceptual Design.

Now, therefore, the parties hereto, for and in consideration of the promises and mutual obligations herein undertaken, do hereby agree as follows:

## **PART I – PURCHASE AND SALE**

### **Section 1. Agreement to Convey Property**

Subject to all of the terms and conditions of this Agreement, the City agrees to sell and convey to Purchaser that certain real property located in the City of Seattle, commonly known as Parcel 4b of the Dearborn-Hiawatha Properties, and legally described on the attached Exhibit I (the "Property"), and generally located as shown on the map attached hereto as Exhibit II. The conveyance shall be made subject to the reserved easement contained as Exhibit A to the Statutory Warranty Deed (on the attached Exhibit VIII)

### **Section 2. Payment of Purchase Price**

Purchaser agrees to pay to the City the sum of One Hundred Thirteen Thousand Five Hundred Dollars (\$113,500.00) (the "Purchase Price") for the Property.. The Purchase Price is payable at Closing (defined in Section 8 below) in cash, by wire transfer, or by cashier's check. The Earnest Money Promissory Note shall be returned by the City to the Purchaser upon payment of the Purchase Price and completion of Closing.

### **Section 3. Conveyance**

Upon (i) the payment of the sum provided in Section 2 and all other amounts required to be paid by Purchaser hereunder, and (ii) the satisfaction of the conditions set forth in this Agreement, the City shall convey fee simple title to the Property, by Statutory Warranty Deed in the form attached hereto as Exhibit VIII (the "Statutory Warranty Deed"), which is hereby approved as to form by Purchaser.

### **Section 4. Title Insurance**

The City shall at its expense provide Purchaser with an ALTA Standard Coverage Owner's policy of title insurance, issued by Pacific Northwest Title Company of Washington, Inc. ("Title Company") in the amount of the Purchase Price of the Property, insuring Purchaser as the sole fee title holder as to the Property.

Purchaser has reviewed a preliminary title commitment (individually and collectively, the "Title Commitment") from Pacific Northwest Title Company, Order no. 325772, dated November 30, 1997, as supplemented through supplement no. \_\_\_\_ dated \_\_\_\_, along with all documents referenced in the Title Commitment (Exhibit III). Any claims, liens, encumbrances and defects (collectively, "Permitted Exceptions") shown thereon are hereby approved and accepted by Purchaser. Prior to the date of closing, the City shall not further encumber the property, or permit additional encumbrances to attach to the

Parcel. Upon receiving notice of the closing date from the Purchaser, the City shall provide at its expense one title update or supplement to the purchaser, to cover the period from the preliminary title commitment dated November 30, 1997 up to a date one week prior to closing. If title to the Property is not insurable at Closing free and clear of all liens ("Liens"), except for the Permitted Exceptions, then the parties may, by mutual written agreement, (i) extend the Closing for up to an additional one hundred eighty (180) days to allow the City or, at Purchaser's option, the Purchaser, to remove such Liens, or (ii) terminate this Agreement as provided herein provided, the City shall return the original Earnest Money Promissory Note to Purchaser, or (iii) continue this Agreement and Purchaser may purchase the Property as otherwise provided in this Agreement.

Purchaser may obtain such additional title insurance coverage as purchaser chooses, as long as Purchaser pays any difference in the cost between the standard coverage policy provided by the City and the increased premium due from any increase in coverage.

**Section 5. Conditions Precedent**

- A. The following shall be conditions precedent to the City's obligation to convey the Property:
1. Purchaser shall have obtained approval from the Director for the Schematic Design (including the landscaping plan), and the Construction Documents as provided in Sections 302, 303, and 304.
  2. Purchaser shall have obtained the grading permit, for the Improvements from DCLU.
  3. Purchaser shall provide evidence satisfactory to the City that Purchaser has the necessary financing to fund the construction of the improvements as provided in Section 307.
  4. Purchaser shall have obtained approval from the Director of the final development schedule as described in Section 310.
  5. Purchaser shall have deposited with Pacific Northwest Title Company (the "Escrow Agent") for delivery to the City, the sum of money required to pay the Purchase Price of the Property as stated under Section 2 of this Agreement and all other amounts payable by Purchaser hereunder in cash or cashiers check or by wire transfer.
  6. Purchaser's representations contained herein shall be true as of the Closing of the Property.
  7. Purchaser shall otherwise be in compliance with all of the terms hereof.

B. The following shall be conditions precedent to Purchaser's obligation to purchase the Property;

1. The City shall have deposited with the Escrow Agent the Statutory Warranty Deed and all other documents and instruments necessary to transfer fee title in the Property.
2. At Closing, title to the Property shall be free and clear of all Liens except for the Permitted Exceptions.
3. The City's representations contained herein relating to the Property shall be true as of Closing.
4. The City shall otherwise be in compliance with all of the terms hereof.

**Section 6. Earnest Money**

Immediately upon execution of this Agreement, Purchaser shall deliver to the City the earnest money promissory note ("Earnest Money Promissory Note", Exhibit VI) in the amount of Five Thousand Six Hundred Seventy Five Dollars (\$5,675.00), which is five percent (5%) of the Purchase Price. The Earnest Money Promissory Note shall be held by the City until such time as Purchaser becomes entitled to return of the Earnest Money Promissory Note under the terms hereof, or until the City becomes entitled to the payment of such Earnest Money Promissory Note under the provisions of this Agreement.

**Section 7. Quit Claim of Easement and Release All Rights in the Alley**

It is understood by the parties that Purchaser intends to initiate a short plat procedure to adjust the lot lines and to segregate the easement area reserved by the City in the deed attached as Exhibit A ("reserved easement") to the Statutory Warranty Deed (Exhibit VIII to this Agreement). In the event Purchaser successfully completes the short plat process, and the adjusted lines do not decrease the dimensions of the reserved easement, Purchaser may execute a quit claim deed ("Quit Claim Deed", Exhibit IX) to convey the reserved easement area to the City. If the platted lot lines are less than the dimensions of the reserved easement, the City shall not release its easement rights.

In addition Purchaser, its heirs, successors and assigns, agrees to release, to the City, its successors and assigns, all rights, title, and interest to the alley abutting the reserved easement, and legally described as:

*The sixteen foot wide alley lying east of Block 2, Rainier Addition to the City of Seattle, according to the plat thereof recorded in Volume 9 of Plats, page 59, Records of King County, Washington, as said alley was platted in said plat of Rainier Addition to the City of Seattle;*

*situate in the City of Seattle, County of King, State of Washington.*

When requested by the City, Purchaser, its heirs, successors and assigns, shall join with the City in petitioning for vacation of the alley after the completion of development of the Property.

**Section 8. Closing**

- A. "Closing" shall mean the execution, delivery and recording (as appropriate) of all documents and payment of all funds into escrow as provided herein.
- B. Closing shall take place on such date as the Purchaser shall specify in a written notice to the City, which written notice (i) shall be delivered to the City at least ten (10) days in advance of the closing date specified in such written notice, and (ii) may be given at any time within, but not later than forty five (45) days after all conditions required herein to be satisfied prior to Closing, other than deposit of funds and instructions in escrow, have been satisfied, but in any event closing shall occur no later than July 1, 2000. Purchaser is allowed two closing extensions, subject to the approval of the Director to (a) July 1, 2001 and (b) July 1, 2002. The Purchase price shall be increased by One Thousand One Hundred Thirty Five Dollars (\$1,135.00) per month (1% of Purchase Price) for each month that closing is delayed beyond July 1, 2000, unless, the first extension was requested because the necessary permits had not been issued in time and the delay is not caused by the action or inaction of the Purchaser, and the Purchaser can demonstrate to the Director that its permit applications, and responses to correction notices were made in a timely manner to allow sufficient time for permits to be issued by the July 1, 2000 closing date, in which case, the Director may waive any increases to the purchase price for the first extension.
- C. At least seven (7) days in advance of Closing, the City and Purchaser shall each deliver to the Escrow Agent for deposit into escrow, with a copy to the other party, all of the documents, instruments, promissory notes, monies and instructions necessary to complete the transfer of said Property pursuant to the terms of this Agreement, each document, instrument and instruction bearing all the original signatures called for therein. Such documents, instruments and instructions include, without limitation, the Statutory Warranty Deed and the parties' respective escrow instructions, if any. The Escrow Agent shall hold all of these documents, instruments, promissory notes and monies in escrow and shall not release or return them, except pursuant to the written instructions of both the City and Purchaser.
- D. At Closing, the Escrow Agent shall be instructed to record the Statutory Warranty Deed (Exhibit VIII), and to instruct in turn the King County Office of Records and Elections to mail the original of the Statutory Warranty Deed following recording, to the Purchaser as grantee.

- E. The escrow fee charged in connection with this closing shall be paid one-half each, by the Purchaser and the City. Any taxes, assessments or public charges that are payable with respect to the Property during the City's ownership thereof shall be prorated and paid by the City as of Closing, Purchaser shall pay the cost of recording the deed and any documents required by Purchaser's financing.
- F. At Closing, Purchaser shall deliver to the City through the Escrow Agent a cash deposit of Five Thousand Six Hundred Seventy Five dollars (\$5,675.00), an amount equal to five percent (5%) of the Purchase Price as security for completion of the Improvements to be constructed on the Property ("Completion Deposit"). The Completion Deposit (as defined below) shall be returned to Purchaser upon receipt by Purchaser of a Certificate of Completion for said Improvements. This Completion Deposit shall be held by the City until such time as the Purchaser becomes entitled to cancellation of the Completion Deposit under the terms hereof, or until the City becomes entitled to retain the Completion Deposit under the provisions of this Agreement. Purchaser shall not be entitled to interest on the Completion Deposit.
- G. The City shall submit the Earnest Money Promissory Note to the Escrow Agent who shall surrender it to the Purchaser in exchange for full payment of the Purchase Price as described in Section 2 of this Agreement.
- H. If the sale fails to close due to fault of one of the parties, as described in Sections 702 and 703 of Part III of this Agreement, then such party shall be solely responsible for all escrow and title insurance cancellation charges. If the sale fails to close by the date set forth in subsection A above for reasons other than those set forth in Sections 702 or 703, then the Earnest Money Promissory Note shall be returned to Purchaser, and the Purchaser shall pay directly to the escrow agent one half of any escrow or title insurance cancellation charges and the City shall pay one-half from the City's own funds.

**Part II - DEVELOPMENT**

**SUBPART 100 - COMPLIANCE WITH CONCEPTUAL DESIGN**

**Section 101. Compliance with Proposal and Conceptual Design; Improvements**

Purchaser shall develop the Property substantially as shown in the Conceptual Design (Exhibit V), or as otherwise approved in writing by the Director, and in compliance with all applicable state and local laws and regulations. The improvements to be constructed on the Property more specifically described in the Construction

Documents to be submitted to DCLU and Office of Housing by Purchaser as provided hereunder, are referred to as the "Improvements."

## **SUBPART 200 - ACCEPTANCE, CONDITION AND POSSESSION OF PROPERTY**

### **Section 201. Acceptance AS IS**

Purchaser acknowledges and agrees that (i) the City has provided Purchaser with a Phase I environmental assessment with regard to the Property, dated April 1991, prepared by Parametrix Inc., and a Report of Geotechnical Investigation and Modified Environmental Assessment with regard to the Property, dated July 1, 1996, prepared by PacRim Geotechnical, Inc. (together the "Environmental Assessment"), (ii) Purchaser has been informed that Giant Hogweed, a King County designated noxious weed has apparently been growing on portions of the Property, and information describing the property owner's responsibilities associated with such weeds are attached hereto in Exhibit IV; (iii) Purchaser has been afforded the opportunity to make such investigations and inspections of the Property and of the City's records with respect to the Property and matters related thereto as Purchaser desires, (iv) Purchaser has entered into this Agreement on the basis of its own investigation of the physical condition of the Property, including subsurface conditions. Purchaser further specifically acknowledges and agrees that notwithstanding any prior or contemporaneous oral or written representations, statements, documents, reports, studies or communications of the City, this Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous oral or written representations, statements, documents, reports, studies or communications. In addition, Purchaser specifically acknowledges and agrees that EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE CITY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY RELATED MATTER, the Property is sold to Purchaser in an "AS IS" condition as of Closing and, except as specifically set forth in Section 202 hereof, Purchaser assumes the risk that adverse physical conditions may not have been revealed by its investigation, (iv) Purchaser explicitly took into account such risk in its decision to enter into this Agreement on the terms set forth herein, and (v) except as otherwise provided herein, Purchaser 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 may not have been revealed by Purchaser's investigation.

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

## **Section 202. Changes in Condition**

1. Purchaser has inspected the Property in its present condition as of the date of this Agreement and such inspection has not disclosed any physical condition that would materially impair the development thereof as contemplated hereunder.
2. If Purchaser or the City becomes aware of any change in the physical condition of the Property or any portion thereof after the date of this Agreement that would materially impair the feasibility of the project as contemplated hereunder or would substantially increase the hard construction costs of the project above (a "Changed Condition"), such party shall within ten (10) days of becoming aware of such Changed Condition notify the other party in writing of such Changed Condition.
  - a) If the Changed Condition is caused by Purchaser or its agents, employees or contractors, Purchaser shall restore the Property to its prior condition.
  - b) If the Changed Condition is caused by the City or its agents, employees or contractors, the City shall at its discretion (i) restore the Property to its prior condition and reimburse Purchaser for Purchaser's damages caused by the Changed Condition or the City's restoration of the Property, or (ii) terminate this Agreement by written notice to Purchaser, return the Earnest Money Promissory Note, and reimburse Purchaser for all out-of-pocket costs directly related to development of the Property and incurred by Purchaser from August 24, 1998, the date of preliminary developer selection, through the date on which the City notifies Purchaser in writing of its election of termination.
  - c) If neither Purchaser nor the City is responsible for the Changed Condition, which may include, but shall not be limited to the discovery of pre-existing Hazardous Substances on the Property, then (i) if, within fifteen (15) days after the City sends or receives written notice of the Changed Condition, the City gives written notice to Purchaser that the City elects to remedy the Changed Condition, then this Agreement shall remain in effect and the City shall remedy the Changed Condition prior to Closing, or (ii) if the City does not give written notice of such election within said fifteen (15) days, then Purchaser shall have the option, by written notice to the City no later than fifteen (15) days after sending or receiving notice of the Changed Condition to terminate this Agreement and the City shall return the all Earnest Money Promissory Note, , in which case neither party shall have any further obligation or liability, of any kind whatsoever, to the other under this agreement..
3. Any written notice from Purchaser to the City hereunder that Purchaser is prepared to close the purchase of the Property shall constitute Purchaser's representation that it has reinspected the Property and agrees to accept it in its condition on the date of such notice, whether or not such condition has changed from the date hereof.

4. Purchaser has been advised that improvements will be required to the existing infrastructure, including but not limited to utilities serving the Property, but the extent of such required improvements to the infrastructure has not been determined. If, prior to the Closing of the Property under this Agreement, Purchaser determines in its sole discretion that the cost to Purchaser of required infrastructure improvements will exceed the one hundred thousand dollars (\$100,000) initially estimated, and will materially impair the feasibility of the project, as contemplated hereunder or will substantially increase the hard construction costs above, Purchaser shall have the option, as Purchaser's sole recourse, to terminate this Agreement by written notice to the City and receive the return of the Earnest Money Promissory Note and thereafter neither party shall have any further obligation or liability, of any kind whatsoever, to the other under this Agreement.
5. Together with any notices required under this paragraph, the parties shall, to the extent they have not already done so, provide the other party with a copy of any reports or findings that disclose the Changed Condition or describe how such Changed Condition would in fact materially impair the development of the Property as contemplated hereunder, or would substantially increase the cost of such development.

#### **Section 203. Possession**

Purchaser shall be entitled to exclusive possession of the Property (subject to the rights of the City contained herein) upon recording of the Statutory Warranty Deed.

#### **Section 204. Remediation by City Prior to Closing**

If during the period after execution of this Agreement and prior to the closing on the Property, Purchaser discovers and gives written notice of the location of significant amounts of buried debris (e.g. concrete, appliances, or other trash) dumped on the site, and underground storage tanks ("UST") located on the property, the City shall cause to be removed, or shall credit against the Purchase Price the expenses incurred by Purchaser that are pre-approved by the City in writing not to exceed fifteen thousand dollars (\$15,000), for removal of the debris and the underground storage tanks discovered on the Property, for cleaning or removing any soils contaminated with Hazardous Waste, the cost of any report required to certify the successful removal of the UST's and the contaminated soils that may be required by law. In addition, the City will provide one site clean-up, in close proximity to the closing date, and upon request by the Purchaser, whereby all garbage and waste visible from a non-intrusive inspection of the soils, located on the Property will be removed from the site at the City's sole cost, which combined costs shall not exceed the maximum amount of fifteen thousand dollars (\$15,000.00) provided above. Prior to Closing the City will have the Property maintained regularly so that the grass and weeds are trimmed away from the sidewalk and any illegal dumping, when discovered, is promptly removed from the site.