

Real Property Purchase and Sale Agreement  
Capehart Property  
Pacific Northwest Communities/City of Seattle

This Real Property Purchase and Sale Agreement (the "Agreement") is made and entered into as of this 29th day of June, 2007, by and between THE CITY OF SEATTLE, a Washington municipal corporation, ("Buyer" or "City"), and PACIFIC NORTHWEST COMMUNITIES, LLC, a Delaware limited liability company ("Seller" or "PNC").

A. The United States Navy ("Navy"), pursuant to the Military Housing Privatization Initiative W.L. 104-106, 110 Stat. 544, Title XXVII, Subtitle A, Section 2801), which amends 10 U.S.C. 169, has determined to privatize certain Navy family housing in the Navy's Northwest Region, including certain land and housing within the boundaries of the City's Discovery Park and legally described in Exhibit A and Exhibit B attached hereto (hereinafter the "Fort Lawton Properties").

B. Seller is the limited liability company formed for the purpose of carrying out the privatization of Navy family housing in the Northwest Region. American Eagle Northwest, LLC, is the managing member of Seller and the Navy is also a member.

C. The Navy has determined to permanently divest the Fort Lawton Properties at Discovery Park and to use the proceeds from the transaction to support and extend Navy project work in other areas including construction of replacement family housing at locations closer to Naval Station Everett.

D. Certain of the Fort Lawton Properties are listed on the National Register of Historic Places and are part of a local historic district within Discovery Park. These properties are referred to as Parcels A, B and D on Exhibit B, hereinafter collectively the "Historic Properties" and individually the "Washington Avenue South Housing", the "Washington Avenue North Housing" and the "Montana Circle Housing", respectively. The Navy has or will convey the Historic Properties to Seller for divestiture to the private sector on terms and conditions that insure preservation of the important historical heritage represented by the Historic Properties and maximize their economic value as intended by the Navy in connection with their divestiture. The Historic Properties have been the subject of a consultation under Section 106 of the National Historic Preservation Act that resulted in a Programmatic Agreement among the Navy, the Washington State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP), with the City as a consulting party, for the Privatization of Family Housing in the Navy Region, Northwest, executed in October 2004 and amended February 2007. Amendment 1 to the Programmatic Agreement provides that the transfer of the Historic Properties by Navy to PNC shall be subject to the Historic Covenant attached as Exhibit C to Amendment 1, which Historic Covenant shall

thereafter be a binding servitude that runs with title to the Historic Properties in perpetuity.

E. PNC wishes to sell to City, and City wishes to acquire from PNC, a different portion of the Fort Lawton Properties, referred to as the Phase 1 Lot and the Phase 2 Lot on Exhibit A and together commonly known as the Capehart Property, for the purpose of expanding, enhancing and preserving Discovery Park (the "Capehart Property"). (The parties do not intend, and nothing within this Agreement shall be construed to mean, that any portion of the Historic Properties described in Exhibit B shall be conveyed by PNC to City.) The Capehart Property is currently improved with sixty-six (66) existing military housing units and two outbuildings, one of which houses a Navy exchange and the other which houses a maintenance shop. The Phase 1 Lot is approximately 6 acres in size and includes the aforementioned Navy exchange building and maintenance shop. The Phase 2 Lot is approximately 17.91 acres in size and presently includes the aforementioned 66 housing units, which housing units shall be demolished by Seller according to the terms and conditions of Section 5.1(e) below.

F. PNC wishes to sell and City wishes to acquire the Capehart Property in two phases in order to allow PNC time to complete the construction of replacement family housing for the Navy personnel now in residence on the Phase 2 Lot at locations closer to Naval Station Everett. The replacement housing is estimated to be completed by December 10, 2009.

G. City and PNC previously entered into that certain Memorandum of Understanding dated as of December 21, 2004 and amended pursuant to an Addendum to Memorandum of Understanding dated as of June 20, 2006 (the "MOU") for the purpose of setting forth their mutual understanding regarding both the conveyance of the Capehart Property to the City and preservation and improvement of the Historic Properties.

H. PNC has received from the City's Department of Planning and Development a written response to PNC's two May 21, 2007 requests for interpretation, confirming that the three parcels that comprise the Historic Properties are existing legal lots and no further subdivision, short plat or boundary line adjustment is necessary in connection with future conveyances, individually or collectively, of the Historic Properties and that the existing improvements on each of the three parcels that comprise the Historic Properties are legal nonconforming uses and structures in their existing condition.

In consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree as follows:

## ARTICLE I. CAPEHART PROPERTY

Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, the obligations of each of them subject to the terms and conditions set forth herein, the following:

1.1 Land and Improvements. That certain 23.91 acre parcel of real property and improvements referred to herein as the Phase 1 Lot and the Phase 2 Lot and collectively as the Capehart Property and as legally described and depicted on Exhibit A; provided, however, that the existing housing units on the Phase 2 Lot shall be demolished by Seller according to the terms and conditions of Section 5.1(e) below.

1.2 Appurtenances; Seller's Reserved Easements. The Capehart Property shall include an assignment of all rights, privileges, easements, rights-of-way, permits, licenses and other rights, including without limitation Seller's rights to all minerals, oil, gas and other hydrocarbon substances on and under the Capehart Property, to the extent such foregoing rights are owned by Seller and appurtenant to the Capehart Property; provided, however, that the assignment by Seller shall be non-exclusive and Seller shall retain certain access and utilities easement rights over and across the Phase 1 Lot as described below for the benefit of the Phase 2 Lot as described in Exhibit C attached hereto ("Seller's Reserved Easements"). Seller's Reserved Easements shall continue in effect until such time as Closing of the Phase 2 Lot has occurred as set forth herein. In addition, prior to the expiration of the Inspection Period Buyer and Seller shall determine, at Seller's expense, which existing or new easements, if any, are necessary or convenient over across or under the Capehart Property in connection with any utilities or improvements lying within the boundaries of the Capehart Property that serve or benefit the Historic Properties and, prior to Closing on the Phase 1 Lot or the Phase 2 Lot, as the case may be, shall enter into mutually acceptable easements in favor of the Historic Properties for such utilities or improvements. To the extent any existing water or utility improvements within the boundaries of the Capehart Property are not necessary or convenient to serve the Historic Properties, in Seller's reasonable determination, Seller shall quit claim to Buyer all of its right, title and interest in and to such improvements and any related hardware or appurtenances not later than the Closing of the Phase 2 Lot.

1.3 Contracts; Leases. The Capehart Property shall not include any concession agreements, service contracts or tenant leases, and Seller shall deliver the Capehart Property to Buyer on the applicable Closing date set for the Phase 1 Lot and the Phase 2 Lot free and clear of all concession agreements, service contracts, other contracts, leases, tenancies and other possessory rights on the terms described herein.

## ARTICLE II. PURCHASE PRICE

2.1 Purchase Price. The total purchase price for the Capehart Property (the "Purchase Price") shall be Eleven Million One Hundred Thousand Dollars (\$11,100,000.00), subject to adjustments, if any, as provided for under this Agreement and divided between the Phase 1 Lot and the Phase 2 Lot as follows:

Phase 1 Lot: \$2,775,000.00

Phase 2 Lot: \$8,325,000.00

The Purchase Price shall be paid by Buyer in good funds on the Closing Date (as defined below).

2.2 Escrow Holder. First American Title Insurance Company, 2101 Fourth Avenue, Suite 800, Seattle, WA 98121 ("Escrow Holder" in its capacity as escrow holder and "Title Company" in its capacity as title insurer) has been designated as Escrow Holder hereunder by mutual agreement of Seller and Buyer. Upon execution of this Agreement by the last of Seller and Buyer (such date herein referred to as the "Date of this Agreement"), Escrow Holder shall open a closing escrow for the benefit of Buyer and Seller in accordance with the terms of this Agreement.

### 2.3 Earnest Money.

(a) Not later than ten (10) days following the Date of this Agreement, Buyer shall deposit with Escrow Holder the sum of Fifty Thousand Dollars (\$50,000.00) by wire transfer or other good funds as the initial earnest money deposit (the "Phase 1 Initial Deposit"). Upon waiver of the Inspection Period contained in Article IV below, Buyer shall deposit with Escrow Holder an additional Eighty-Eight Thousand Seven Hundred Fifty Dollars (\$88,750.00) as an additional earnest money deposit (the "Phase 1 Additional Deposit" and, together with the Phase 1 Initial Deposit, the "Phase 1 Earnest Money"). Upon Closing of the Phase 1 Lot, the Phase 1 Earnest Money, plus interest accrued thereon, shall be credited against the Purchase Price of the Phase 1 Lot. Upon Buyer's approval of its inspection of the Capehart Property pursuant to Section 4.1, the Phase 1 Earnest Money, plus any accrued interest, shall become non-refundable to Buyer, except in the event Closing on the Phase 1 Lot fails to occur due to Seller's default under this Agreement or due to failure of any condition precedent to Buyer's obligations set forth in Article V. Escrow Agent shall deposit the Phase 1 Earnest Money in an interest bearing account at a financial institution approved by Buyer and Seller.

(b) On or before the Phase 1 Lot Closing Date, Buyer shall deposit with Escrow Holder the sum of One Million Two Hundred Twenty-Five Thousand Dollars (\$1,225,000.00) by wire transfer or other good funds (the "Phase 2 Earnest Money"). The Phase 2 Earnest Money shall be deposited by Escrow Agent in an interest bearing account at a financial institution approved by Buyer and Seller with all interest earned

thereon accruing for the account of Seller. Upon Closing of the Phase 2 Lot, the Phase 2 Earnest Money shall be credited against the Purchase Price of the Phase 2 Lot. The Phase 2 Earnest Money shall be non-refundable to Buyer upon deposit except in the event Closing on the Phase 2 Lot fails to occur due to Seller's default under this Agreement or due to failure of any condition precedent to Buyer's obligations set forth in Article V.

### ARTICLE III. TITLE

3.1 Permitted Exceptions. Seller's conveyance of title to the Capehart Property shall be subject only to the following, whether or not referred to in the Deed (as defined in Section 3.3) (collectively, the "Permitted Exceptions"):

(a) The conditions of title set forth on the pro forma title policy for the Phase 1 Lot and the pro forma title policy for the Phase 2 Lot attached as Exhibit D hereto, which shall incorporate the reservations, covenants, warranties and restrictions set forth in the Quit Claim Deed from the Navy to Seller attached hereto as Exhibit E as well as the easements reserved in favor of Seller as described herein (the "Pro Forma Policies");

(b) Governmental laws, restrictions, regulations, resolutions, ordinances and regulations now or hereafter in effect;

(c) Such other liens and encumbrances as are approved in writing by Buyer.

3.2 Title Insurance. Subject to Buyer fulfilling its obligations hereunder, Seller shall cause Title Company to make available to Buyer at Closing a Standard Coverage Owner's Policy of title insurance or, if Buyer so requests in writing and Title Company agrees, an Extended Coverage Owner's Policy of title insurance, issued by Title Company in the amount of the Purchase Price, dated the date of Closing, insuring Buyer's title to the Capehart Property subject to no exceptions other than the standard printed exceptions and the Permitted Exceptions (the "Title Policies"). The Title Policies shall contain such endorsements as Buyer may specify and which Title Company is willing to issue provided that Buyer shall pay (a) the cost of all endorsements, (b) the cost of the premium increase for extended coverage if requested by Buyer, and (c) the cost of any survey or survey update required by Title Company for such extended coverage. It is the responsibility of Buyer to ascertain before it approves the results of its inspection of the Capehart Property during the Inspection Period whether the Title Company will commit to issue extended coverage and any endorsements requested by Buyer. Any failure by Title Company to issue extended coverage or any endorsements requested by Buyer or failure by Title Company after Closing to deliver such extended coverage or any endorsements requested by Buyer shall neither excuse Buyer's obligation to close nor constitute a default by Seller of any of its obligations under this Agreement unless such Title Company failure results from the acts or omissions of Seller. At Closing Seller agrees to provide Title Company with such indemnities and/or

affidavits as Title Company may reasonably require to remove from the Title Policies the standard preprinted exceptions for mechanic's liens and parties in possession.

3.3 Conveyance of Capehart Property. At Closing Seller shall convey to Buyer fee simple title to the Capehart Property by execution and delivery of one or more quitclaim deeds in the form of Exhibit F hereto, subject only to the Permitted Exceptions (the "Deed").

3.4 New Title Exceptions. Buyer shall have a continuing right to request Title Company to re-examine title between the time of execution of this Agreement and Closing on each of the Phase 1 Lot and Phase 2 Lot (the "Pre-Closing Period"). With respect to any new exceptions reported during the Pre-Closing Period and not appearing in the ProForma Policies, the parties agree as follows:

(a) In the event of any such new exceptions that arise by, through or under Buyer (for example, labor or mechanic's liens arising from Buyer's inspection of the Capehart Property during the Inspection Period), Buyer shall have no right to object thereto and such new exceptions shall be added to the Permitted Exceptions.

(b) In the event of any such new exceptions that arise by, through or under Seller (for example, a mortgage, deed of trust or other lien filed by or against Seller), Seller shall be obligated to cause such new exception to be removed from title at Closing or, at Seller's election and expense, insured over by Title Company in the applicable Title Policy.

(c) As to any other new exceptions, Buyer shall have the right to give Seller written notice of Buyer's objections to such new exceptions, in which event Seller shall have five (5) business days from receipt of Buyer's notice to notify Buyer in writing whether Seller intends to cause such new exceptions to be removed from title at Closing or, if Buyer agrees, insured over by Title Company in the applicable Title Policy at Seller's expense. Seller's failure to deliver written notification to Buyer as set forth herein shall be deemed to constitute Seller's election not to agree to remove or cause the removal of any new title exception to which Buyer has objected under this subparagraph (c). If Seller does not agree to remove or cause the removal of any new title exception to which Buyer has objected under this subparagraph (c), then Buyer shall have the right to terminate this Agreement by giving written notice of termination to Seller and Escrow Holder. Upon such termination the applicable Earnest Money deposit including accrued interest shall be returned to Buyer and the parties shall be released of any further liability hereunder, except for any obligations hereunder which are expressly stated to survive termination of this Agreement. If Buyer does not object to any new title exception under this subparagraph (c), or Seller does not agree to remove or cause the removal of any new title exception to which Buyer has objected under this subparagraph (c) and Buyer elects to proceed to Closing, Buyer's rights to so object and any objections Buyer has made shall be deemed waived and such new exception shall be added to the Permitted Exceptions.

## ARTICLE IV. INSPECTION OF PROPERTY

### 4.1 Inspection Period.

(a) Buyer shall have until 5:00pm Pacific Time on or before the sixtieth (60th) day following the mutual execution date hereof (the "Inspection Period") to conduct a due diligence and feasibility review with respect to the Capehart Property to determine the suitability of the Capehart Property for Buyer's intended uses and the feasibility of the transaction, all in the Buyer's sole and absolute discretion. If Buyer fails to provide written notice to Seller of its satisfaction or waiver of Buyer's condition set forth in this Section 4.1(a) prior to expiration of the Inspection Period, then this Agreement shall automatically terminate, the Phase 1 Initial Deposit and accrued interest shall be returned to Buyer, and Buyer shall within ten (10) days thereafter deliver to Seller any review materials, documents, surveys, environmental reports or any other documentation provided by Seller to Buyer for its review. If Buyer gives timely written notice of satisfaction or waiver, then this Agreement shall continue in full force and effect on the terms and conditions set forth herein; provided, however, that Buyer's written notice of satisfaction or waiver delivered as set forth in this Section 4.1(a) shall not constitute or be deemed to constitute an approval or waiver by Buyer of the environmental condition of the Capehart Property pursuant to Section 4.2.

(b) Buyer shall have the continuing right of access to the Phase 2 Lot for the purpose of inspecting the environmental condition of the Phase 2 Lot. At the written request of Buyer made at least thirty (30) days prior to the scheduled Closing of the Phase 2 Lot, Seller shall provide to Buyer, at Seller's expense, a Phase 1 environmental assessment of the Phase 2 Lot prepared by a qualified environmental consulting firm. Buyer shall have ten (10) days to review the Phase 1 environmental site assessment to determine if the assessment is acceptable, in Buyer's reasonable determination, or to notify Seller in writing that it intends to terminate this Agreement in which case the Agreement shall terminate, the Phase 2 Earnest Money shall be returned to Buyer, plus accrued interest, and the parties shall have no further rights or responsibilities hereunder with respect to the Phase 2 Lot; provided, however, that in the event that the Phase 1 environmental assessment recommends Phase 2 testing be performed or discloses the presence of any environmental contamination, including without limitation lead, asbestos or petroleum products, in amounts or types not previously disclosed to Buyer by Seller or in any materials delivered to Buyer by Seller, including but not limited to the ECP or the FONSI, then Buyer may further elect to have Seller perform Phase 2 testing, at Seller's expense. If Buyer elects to have Seller perform Phase 2 testing, then the Closing Date for the Phase 2 Lot shall be extended by the time period necessary to enable Seller to complete such work using a qualified environmental consulting firm and to deliver Buyer the results of the Phase 2 testing, following which Buyer shall have a ten (10) day period to review the Phase 2 test results and to notify Seller in writing whether such results are acceptable, in which event the parties shall proceed to Closing of the Phase 2 Lot, or that the results are not acceptable in which event this Agreement shall terminate, the Phase 2 Earnest Money

shall be returned to Buyer, plus accrued interest, and the parties shall have no further rights or responsibilities hereunder with respect to the Phase 2 Lot. In the event Buyer fails to notify Seller of the satisfaction or waiver of Buyer's conditions set forth in this Section 4.1(b) in the time periods set forth herein for notification, then this Agreement shall be deemed terminated, the Phase 2 Earnest Money plus accrued interest shall be returned to Buyer and the parties shall have no further rights or responsibilities hereunder with respect to the Phase 2 Lot.

4.2 Access Pending Closing. Buyer's rights to access the Capehart Property prior to Closing is and shall be governed by that certain Right of Entry dated December 14, 2006 previously agreed to by Buyer and Seller, which is hereby amended to extend its term and termination date to the earlier of the Closing Date or the date on which this Agreement is earlier terminated (as amended, the "Access Agreement"). The indemnification obligations of Buyer set forth in the Access Agreement shall survive Closing or earlier termination of this Agreement.

## ARTICLE V. CONDITIONS PRECEDENT TO CLOSING

5.1 Buyer's Conditions Precedent to Closing. Buyer's obligations under this Agreement to close on the Capehart Property are expressly conditioned on, and subject to satisfaction of, the following conditions precedent:

(a) Seller shall have performed all obligations required by this Agreement to be performed by it as of the applicable Closing Date, including but not limited to termination of any leases or service contracts applicable to the Capehart Property.

(b) Title Company shall be ready, willing and able to issue the Title Policies as set forth in Section 3.2, provided Buyer has fulfilled its obligations with respect thereto.

(c) Except to the extent approved or waived by Buyer in writing pursuant to Section 4.1, at no time prior to the Closing Date shall there be any change in the physical or environmental condition of the Capehart Property that would have a material adverse impact on Buyer's intended use (Article IX shall apply in the case of damage or destruction).

(d) On or before November 1, 2007, there shall be an effective Seattle City Council ordinance authorizing the transactions contemplated by this Agreement, including the granting, formalizing, clarifying, terminating and accepting certain utility easements and acceptance of ownership of certain utilities as contemplated by this Agreement, and appropriating all necessary funds to complete the purchase of the Capehart Property.

(e) With respect to the Closing of the Phase 2 Lot only, Seller shall have removed and disposed of all portions of the existing 66 housing units above their



foundations and consistent with the scope of work for the demolition as set forth in Exhibit G attached hereto at least 15 days prior to the scheduled Closing date.

(f) Seller's representations and warranties as set forth herein are true and correct as of the applicable Closing Date.

(g) The conditions set forth in Section 6.1(d) shall have been satisfied in Buyer's absolute discretion.

The conditions set forth in Section 5.1 are intended solely for the benefit of Buyer. If any of the foregoing conditions are not timely satisfied as of the applicable Closing Date (or such earlier date in the case of subsections 5.1(d) and (g), or otherwise waived by Buyer, in Buyer's sole discretion, Buyer may elect to terminate this Agreement by written notice to Seller. Escrow Agent shall, if Buyer so elects to terminate, return to the parties all documents then in escrow and the applicable portion of the Earnest Money (including accrued interest) as described in Section 2.3, and the parties shall have no further obligations hereunder other than those obligations which survive the termination of this Agreement by their express terms.

5.2 Seller's Conditions Precedent. Seller's obligations under this Agreement are expressly conditioned on, and subject to satisfaction of, the following conditions precedent:

(a) Buyer shall have performed all obligations required by this Agreement to be performed by it.

(b) Seller shall have acquired fee title to the Capehart Property from the Navy and all other necessary approvals from the Navy or any other governmental entity in connection with conveyance of the Capehart Property to Buyer shall have been obtained

(c) On or before November 1, 2007, there shall be an effective Seattle City Council ordinance authorizing the transactions contemplated by this Agreement, including the granting, formalizing, clarifying, terminating and accepting certain utility easements and acceptance of certain utilities as contemplated by this Agreement, and appropriating all necessary funds to complete the purchase of the Capehart Property.

(d) All conditions relating to the Historic Properties as described in Article VI hereof shall have been satisfied in Seller's absolute discretion.

(e) Buyer's representations and warranties as set forth herein are true and correct as of the applicable Closing Date.

The conditions set forth in Section 5.2 above are intended solely for the benefit of Seller. If any of the foregoing conditions are not satisfied as of the Closing Date (or such earlier date in the case of subsections 5.2(c) and (d), Seller shall have the right at

its sole election either to waive the condition in question and proceed with the sale or, in the alternative, to terminate this Agreement. Escrow Agent shall, if Seller so elects to terminate, return to the parties all documents then in escrow and the applicable portion of the Earnest Money (including accrued interest) as described in Section 2.3 and the parties shall have no further obligations hereunder other than those obligations which survive the termination of this Agreement by their express terms.

## ARTICLE VI. HISTORIC PROPERTIES

6.1 Planned Restoration of Historic Properties. Navy is conveying the Historic Properties to PNC for PNC's disposition of the Historic Properties consistent with the Navy's mission of divesting certain properties to the private sector and use of the disposition proceeds for new and improved family housing for Navy personnel elsewhere in the Northwest Region. Accordingly, Navy wishes to maximize the economic value of the Historic Properties in connection with their divestiture.

Navy and Seller have determined that the following conditions need to be satisfied in order to carry out the Navy's objectives for the Historic Properties, and hence the parties have agreed that the following shall be conditions precedent (in addition to the conditions precedent set forth in Section 5.2) to the Seller's obligations to convey the Capehart Property to Buyer as follows:

(a) (INTENTIONALLY LEFT BLANK)

(b) (INTENTIONALLY LEFT BLANK)

(c) There shall be an effective Seattle City Council ordinance laying off certain roadways serving the Historic Properties as Park Boulevards (herein "Park Boulevards") as depicted in Exhibit H attached hereto ("Park Boulevards Exhibit") and Seller shall have written confirmation from the Title Company insuring use of the Park Boulevards for ingress, egress and utilities to serve the Historic Properties. Buyer and Seller agree and acknowledge that their mutual intent is that the Park Boulevards provide direct access from the Park Boulevards to the Historic Properties in the location of all current access points and drive lanes serving the Historic Properties, with the exception of Kansas Avenue, which shall not be included as a Park Boulevard notwithstanding that one house at Parcel D, Montana Circle Housing, currently uses Kansas Avenue to access its driveway. Seller understands that Buyer intends to terminate motor vehicle use (other than emergency response and City maintenance vehicles) of Kansas Avenue adjacent to Parcel D and that private driveway access to Kansas must be terminated. Buyer agrees to permit the existing private driveway access from one house at Parcel D to Kansas subject to the following conditions: (i) Seller and any successor in interest shall obtain a revocable use permit (which is not assignable or transferable, but which Buyer agrees to reissue without change to subsequent owners, promptly upon receipt of notice of transfer of the property, until revocation as described in (iii) below), at its sole cost and expense, from the Department of Parks and Recreation for such private driveway access; (ii) within three

years from the Date of this Agreement, Seller or its successor in interest shall relocate, at its sole cost and expense, the private driveway to another portion of Parcel D so that the private driveway has direct access via Parcel D to Utah Street, which will be a Park Boulevard; (iii) permission to use Kansas Avenue shall terminate, and the revocable use permit shall be revoked, upon the earlier of three years from the Date of this Agreement or relocation of the private driveway, whichever first occurs; and (iv) Seller's obligations to obtain a revocable use permit and to relocate the private driveway shall survive Closing and are intended to run with Parcel D for the benefit of Buyer and Discovery Park.

The legal descriptions of the Park Boulevards as depicted in Exhibit H shall be adjusted as necessary to eliminate any strips, gaps or gores lying between the Park Boulevards and the access points and drive lanes serving the Historic Properties, with the exception of Kansas Avenue and the private driveway described above. Also, Seller shall have received written verification from the City of Seattle (or Seattle Parks Department) that the City of Seattle shall have responsibility for any and all maintenance and repair of the Park Boulevards.

(d) Within sixty (60) days of the mutual execution date of this Agreement, Seller and Buyer shall have entered into a mutually agreeable contract (the "Utility Contract") (i) incorporating the scope of work set forth in Exhibit I attached hereto (the "Utilities Scope of Work"); (ii) providing for the issuance of revocable park use permits, license agreements or other form of temporary construction easements in order to provide Seller with reasonable access to such portions of Discovery Park as are reasonably necessary for Seller's completion of the work contemplated in the Utilities Scope of Work; (iii) setting forth the specific terms and conditions for the City of Seattle's acceptance, by and through its Seattle Public Utilities Department ("SPU"), of ownership and responsibility for all maintenance and repair (except as set forth in the Utilities Scope of Work), of certain water and sanitary sewer pipes and other related, necessary or convenient utility infrastructure serving the Historic Properties; (iv) formalizing and clarifying easements with respect to Seller's utility infrastructure crossing Buyer's property and serving the Historic Properties; (v) capping and filling (to City standards) certain abandoned and unnecessary water and sanitary sewer pipes and related infrastructure as set forth in the Utilities Scope of Work; (vi) terminating all of Seller's easements with respect to water and sanitary sewer utility infrastructure not necessary or convenient for the Historic Properties (and excepting those easements described in Exhibit C hereto burdening the Phase 1 Lot for the benefit of the Phase 2 Lot); (vii) holding Buyer harmless from any and all costs associated with the Utilities Scope of Work, including without limitation costs of permitting, inspection, construction and any cost overruns; and (viii) providing that Seller shall be responsible for obtaining all necessary permits and complying with all applicable laws and regulations in connection with the Utilities Scope of Work.

The terms and conditions for Buyer's acceptance of ownership, maintenance and responsibility of certain water and sanitary sewer pipes and other related, necessary or convenient utility infrastructure serving the Historic Properties will include the following:

(i) certain water utility infrastructure and all sanitary sewer utility infrastructure as described in the Utilities Scope of Work must be built, repaired, relined or replaced in accordance with the Utilities Scope of Work and applicable City standards (to the extent such standards are consistent with the Utilities Scope of Work); (ii) all design, construction, repair, relining and materials and their conformance to the Utilities Scope of Work and applicable City standards (to the extent such standards are consistent with the Utilities Scope of Work) must be approved and verified via infield inspections by SPU, and SPU shall have the right to have any deficiencies corrected prior to acceptance of any of the water and sanitary sewer utility distribution infrastructure where such materials, construction, repair, relining or designs are not in compliance with the Utilities Scope of Work, City standards or City permits; provided that any such permits concerning the water and sanitary sewer infrastructure as described herein shall be consistent with the Utilities Scope of Work and provided further that the infield inspections done by SPU are for SPU internal purposes only and shall not constitute compliance with or relieve Seller from its obligation to comply with all applicable permits, laws, statutes, ordinances or regulations; (iii) upon Seller's substantial completion of the utility infrastructure described in the Utilities Scope of Work, Buyer (or SPU) shall receive as-built surveys, with legal descriptions, of such infrastructure improvements prepared by Seller's surveyor and approved by SPU; (iv) Seller shall grant easements in standard SPU form for any water and sanitary sewer utility infrastructure in or crossing the Historic Properties to be maintained by the City for access, repair, maintenance, inspection, reconstruction, replacement, and associated purposes; and (v) SPU shall have received Seattle City Council authorization by ordinance for the actions contemplated herein.

Notwithstanding anything to the contrary set forth herein, where the terms and conditions of any element of design, repair, relining, replacement, relocation, abandonment or materials as set forth in the Utilities Scope of Work or Utility Contract differ from any otherwise applicable City or SPU standard or permit, the Utilities Scope of Work and Utility Contract shall govern and control. A copy of the final agreed-upon form of Utility Contract shall be attached to this Agreement as Exhibit J. The Utility Contract shall be executed at Closing of the Phase 1 Lot and shall survive Closing and continue as provided therein. Upon execution, the Utility Contract shall supersede this Subsection 6.1(d).

## ARTICLE VII. OPERATIONS PENDING CLOSING

7.1 Operations Pending Closing. At all times prior to the Closing or the sooner termination of this Agreement, Seller agrees: (a) to maintain, manage and operate the Capehart Property free from waste and neglect, in accordance with applicable law and consistent with its past management practices; (b) to maintain the Capehart Property in its current condition and state of repair (normal wear and tear and casualty loss excepted); (c) to rent housing units on the Capehart Property only to military personnel and their families who will be relocated to replacement housing by Seller and/or the applicable military or other federal agency responsible for such relocation; (d) not to use, generate, manufacture, produce, store, release, discharge or

dispose of, on, under, above or about the Capehart Property (or off-site of the Capehart Property that would affect the Capehart Property), or transport in an unlawful manner to or from the Capehart Property, any hazardous, dangerous or toxic waste or substance, including petroleum products, as those terms are used under applicable environmental laws; and (e) to pay all applicable local, state and federal taxes, if any, due and payable by Seller prior to Closing that would otherwise become a lien against the Capehart Property.

7.2 Condition of Title. At all times prior to the Closing or sooner termination of this Agreement, Seller agrees with respect to all or any portion of the Capehart Property: (a) not to further mortgage or encumber the Capehart Property; (b) not to enter into any written or oral contracts or agreements which would be binding on Buyer after Closing without the prior written consent of Buyer; and (c) not to enter into any contracts or agreements to sell or otherwise transfer the Capehart Property.

## ARTICLE VIII. CLOSING AND ESCROW

8.1 Closing. The Closing of the Phase 1 Lot shall occur at the offices of the Title Company on or before December 10, 2007, and Closing of the Phase 2 Lot shall occur at the offices of the Title Company on or before December 10, 2009, (extended, as necessary, to complete the environmental site assessments described in Section 4.1) and provided, however, that Seller shall be entitled to an extension of up to one (1) year for the Phase 2 Lot Closing in the event Seller has not substantially completed the replacement military housing intended for the existing tenants on the Phase 2 Lot. Buyer and Seller shall deposit in escrow with Title Company all instruments and documents as described herein to complete the transaction in accordance with this Agreement. As used herein, "Closing" or "Closing Date" means the date on which all appropriate documents for the Phase 1 Lot or the Phase 2 Lot, as the case may be, are recorded and the proceeds of the applicable sale are available for disbursement to Seller.

8.2 Delivery by Seller. On or prior to each Closing Date, Seller shall deposit with Escrow Holder, the following:

(a) The duly executed and acknowledged Deed ready for recordation on the Closing Date together with a duly executed real estate excise tax affidavit;

(b) The FIRPTA Affidavit executed by Seller in the form of Exhibit K hereto;

(c) Any documents required to eliminate of record any existing deeds of trust and other monetary liens or encumbrances which are a lien on the Capehart Property and which Seller has agreed to remove pursuant to Article III above.

8.3 Delivery by Buyer. On or prior to each Closing Date Buyer shall deposit with Escrow Holder the Purchase Price (as adjusted pursuant to Sections 8.5 and 8.6).

8.4 Title Policy; Other Instruments. Title Company shall issue the applicable Title Policy at each Closing or as soon thereafter as practicable. Seller and Buyer shall each deposit such other instruments as are reasonably required by Escrow Holder, Title Company or otherwise required to close the escrow and consummate the purchase and sale of the Capehart Property in accordance with the terms hereof.

8.5 Prorations. All expenses of the Capehart Property for the applicable year of Closing, including but not limited to, real property taxes, surface water management charges, drainage district service charges, water, sewer and utility charges, current year's' installments of assessments or LIDs, and other expenses normal to the operation and maintenance of the Capehart Property, but excluding insurance premiums, shall be prorated as of 12:01 a.m. on the Closing Date. The general real estate tax and assessments prorations will be on the basis of taxes paid or payable in the year of Closing.

8.6 Closing Costs and Expenses. Buyer and Seller shall each pay their own attorneys fees and expenses to perform their obligations hereunder in addition to the following:

(a) Seller shall pay:

i The owner's standard coverage portion of the premium for the Title Policy;

ii All real estate excise taxes, and other transfer taxes applicable to the transfer of the Capehart Property excluding any sales tax on personal property, if any; and

iii One-half (1/2) of the fees for the Escrow Holder.

(b) Buyer shall pay:

i One-half (1/2) of the fees for the Escrow Holder;

ii All costs and expenses of Buyer's consultants and investigations;

iii The premium differential between owner's standard coverage and owner's extended coverage for the Title Policy, together with the cost of all endorsements requested by Buyer;

iv All recording costs for the Deed;

v Any sales tax on personal property, if any (the value of which shall be as reasonably estimated by Buyer and Seller).

8.7 Closing Statements. The prorations shall be made on the basis of a written closing statement submitted by Escrow Holder to Buyer and Seller prior to the Closing Date and approved by Buyer and Seller, which approval shall not unreasonably be withheld. In the event any prorations or apportionments made hereunder shall prove to be incorrect for any reason, then either party shall be entitled to an adjustment to correct the same. Any item which cannot be prorated because of the unavailability of information shall be tentatively prorated on the basis of the best data then available and re-prorated between Buyer and Seller when the information is available. Notwithstanding the foregoing, any adjustments or re-prorations shall be made, if at all, within one hundred eighty (180) days after the Closing Date.

8.8 Deliveries Outside of Escrow. Within five (5) days of the Closing Date Seller shall deliver to Buyer outside of escrow copies of any and all plans, drawings or agreements for utilities and other underground structures relating to the Capehart Property in Seller's possession and not previously delivered to Buyer, provided, however, that Seller shall have no obligation to deliver any plans or other documents pursuant to this Section 8.8 which are available in any public file or record including but not limited to public records of the City of Seattle or King County.

#### ARTICLE IX. REPRESENTATIONS AND WARRANTIES

Seller and Buyer make the following representations and warranties as of the date hereof and as of the applicable Closing Date:

9.1 Seller's Representations. Seller represents and warrants to Buyer except as otherwise disclosed in writing to Buyer:

(a) Litigation. There is no litigation or proceeding pending against Seller, or to Seller's current actual knowledge threatened against Seller, which relate to the Capehart Property or the transaction contemplated by this Agreement.

(b) No Other Options, Sales or Assignments. Seller has not granted any options nor obligated itself in any manner whatsoever to sell the Capehart Property or any portion thereof to any party other than Buyer.

(c) Authority. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business and in good standing in the State of Washington. This Agreement and all documents to be executed by Seller at Closing have been duly authorized, executed and delivered by Seller and are binding on and enforceable against Seller in accordance with their terms. Seller has obtained all authorizations or approvals necessary for Seller to enter into and perform its obligations under this Agreement.

(d) Hazardous Substances. Seller has not received any written notification from any federal, state or local agency that the Capehart Property is currently in violation of any environmental law or regulation other than as set forth in the ECP and the FONSI.

(e) Possessory Rights. As of the applicable Closing date, neither of the Phase 1 Lot and the Phase 2 Lot shall be subject to any leases, tenancies or rights of any persons or parties to possession, and Seller shall hold Buyer harmless from any claim or expense arising from any such lease, tenancy or right.

(f) Condition of Capehart Property at Closing. As of the applicable Closing date, the Phase 1 Lot shall be free of all personal property of any tenants and otherwise free of all garbage, waste and debris according to a commercially reasonable standard. As of the applicable Closing date, the Phase 2 Lot shall conform to the conditions for demolition set forth in Exhibit G, shall be free of all personal property of tenants and shall otherwise be free of all garbage, waste and debris according to a commercially reasonable standard (except as permitted under Exhibit G).

(g) Limitations on Representations and Warranties. Seller's representations and warranties, except those set forth in (c) above, shall survive Closing for a period of one (1) year and shall terminate as of the end of such period except to the extent that Buyer advises Seller in writing of an alleged breach thereof prior to such termination date, stating with specificity the nature of the alleged breach and concurrently providing Seller with documentation thereof.

**EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, BUYER IS PURCHASING THE CAPEHART PROPERTY "AS IS WHERE IS" IN ITS PRESENT CONDITION. BUYER HAS THE OPPORTUNITY TO INSPECT THE CAPEHART PROPERTY AND DOCUMENTATION IN SELLER'S POSSESSION AS PROVIDED HEREIN. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO, AND SHALL HAVE NO LIABILITY FOR: (a) THE CONDITION OF THE CAPEHART PROPERTY OR ANY BUILDINGS, STRUCTURE OR IMPROVEMENTS THEREON OR THE SUITABILITY OF THE CAPEHART PROPERTY FOR HABITATION OR FOR BUYER'S INTENDED USE; (b) ANY APPLICABLE 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; (c) THE AVAILABILITY OR EXISTENCE OF ANY WATER, SEWER OR UTILITIES, ANY RIGHTS THERETO, OR ANY WATER, SEWER OR UTILITY DISTRICTS; (d) ACCESS TO ANY PUBLIC OR PRIVATE SANITARY SEWER OR DRAINAGE SYSTEM; OR (e) THE PRESENCE OF ANY HAZARDOUS SUBSTANCES AT THE CAPEHART PROPERTY OR IN ANY IMPROVEMENTS ON THE CAPEHART PROPERTY, INCLUDING WITHOUT LIMITATION ASBESTOS OR UREA-FORMALDEHYDE, OR THE PRESENCE OF**



**ANY ENVIRONMENTALLY HAZARDOUS WASTES OR MATERIALS ON OR UNDER THE CAPEHART PROPERTY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AND EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, SELLER SHALL HAVE NO LIABILITY WITH RESPECT TO THE CONDITION OF THE CAPEHART PROPERTY UNDER COMMON LAW, OR ANY FEDERAL, STATE, OR LOCAL LAW OR REGULATION, INCLUDING BUT NOT LIMITED TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980 AS AMENDED, 42 U.S.C.A. SECTIONS 9601 ET SEQ., OR WASHINGTON STATE MODEL TOXICS CONTROL ACT AS CODIFIED IN RCW 70.105D, AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT BUYER HEREBY RELEASES AND WAIVES ANY AND ALL CLAIMS WHICH THE BUYER HAS OR MAY HAVE AGAINST THE SELLER WITH RESPECT TO THE CONDITION OF THE CAPEHART PROPERTY. BUYER ACKNOWLEDGES THAT BUYER IS GIVEN THE OPPORTUNITY UNDER THIS AGREEMENT TO FULLY INSPECT THE CAPEHART PROPERTY AND BUYER ASSUMES THE RESPONSIBILITY AND RISKS OF ALL DEFECTS AND CONDITIONS EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, SUCH DEFECTS AND CONDITIONS, IF ANY, THAT CANNOT BE OBSERVED BY CASUAL INSPECTION.**

9.2 Buyer's Representations. Buyer represents and warrants to Seller as of the Closing Date as follows:

(a) Status. Buyer is a Washington municipal corporation.

(b) Authority. Subject to fulfillment of the condition precedent set forth in Section 5.1(d), this Agreement and all documents to be executed by Buyer at Closing are duly authorized, executed and delivered by Buyer and are binding on and enforceable against Buyer in accordance with their terms.

9.3 General Provision Regarding Warranties and Representations. If, prior to Closing, either Buyer or Seller discovers a fact or circumstance which might render a representation or warranty by Seller inaccurate in any material respect as of the Date of this Agreement, it shall promptly advise the other party thereof in writing.

#### ARTICLE X. LOSS BY FIRE OR OTHER CASUALTY: CONDEMNATION

In the event that all or any material portion of the Property is damaged or destroyed by any casualty or is the subject of a taking or condemnation under the provisions of eminent domain law after the Date of this Agreement but prior to the Closing Date, Buyer may terminate this Agreement and the Earnest Money shall be returned to Buyer. If Buyer does not elect to terminate this Agreement, then Seller shall have no obligation to repair or replace any damage or destruction caused by the foregoing nor shall the Purchase Price be reduced, but the following shall apply at the Closing: (a) in the event of a casualty, Buyer shall receive an assignment of the

proceeds of any casualty insurance otherwise payable to Seller; and (b) in the event of a taking, Seller shall assign to Buyer its rights to any condemnation proceeds resulting from such taking and shall not make any settlements without Buyer's prior written approval.

## ARTICLE XI. POSSESSION

Buyer shall be entitled to possession of the Phase 1 Lot and the Phase 2 Lot on the applicable date of Closing, free and clear of all tenant leases or other parties in possession.

## ARTICLE XII. DEFAULT; REMEDIES

12.1 Default by Buyer. Seller and Buyer hereby agree that the damages that would be suffered by Seller in the event of a default by Buyer hereunder in purchasing the Capehart Property would be extremely difficult and impracticable to ascertain, and that the Earnest Money represents the reasonable estimate of the parties of the amount of the damages that Seller would suffer by reason of Buyer's default. Buyer and Seller understand and agree that the Earnest Money is a reasonable liquidated damage amount under the terms of this Agreement and the existing circumstances. Accordingly, in the event that escrow does not close because of a default by Buyer hereunder, and provided that all conditions to Buyer's obligations have been satisfied, Seller shall be entitled to receive and retain the Earnest Money as set forth herein as liquidated damages and not a penalty or forfeiture, as Seller's sole and exclusive remedy for Buyer's default at law or in equity and upon receipt of such amount by Seller, Buyer and Seller shall be relieved of any further obligations or liabilities hereunder, express as expressly set forth elsewhere herein. Buyer and Seller shall sign below this Section 12.1 indicating their agreement to the liquidated damage clause herein contained.

Seller

Buyer

12.2 Default by Seller. If Seller fails, without legal excuse, to complete the sale of the Capehart Property in accordance with the terms of this Agreement or otherwise defaults hereunder, Buyer may elect to pursue any one or more of the following remedies: (a) terminate this Agreement and receive a refund of the Earnest Money together with accrued interest; (b) sue for damages but in no event shall Buyer be entitled to recovery of any damages, including any award of attorneys' fees, expenses or costs, in excess of an amount equal to the amount of the Earnest Money; or (c) specifically enforce this Agreement.

12.3 Attorneys' Fees. In the event either party brings an action or any other proceeding against the other party to enforce or interpret any of the terms, covenants or conditions hereof, the party prevailing in any such action or proceeding shall be paid all costs and reasonable attorneys' fees by the other party in such amounts as shall be set by the court, at trial and on appeal.

### ARTICLE XIII. MISCELLANEOUS

13.1 Brokers and Finders. Each party represents and warrants to the other that no broker or finder has been involved in this transaction. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection with this Agreement, Buyer, if such claim is based upon any agreement alleged to have been made by Buyer, hereby agrees to indemnify Seller against any and all damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) which Seller may sustain or incur by reason of such claim. Seller, if such claim is based upon any agreement alleged to have been made by Seller, hereby agrees to indemnify Buyer against any and all damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) which Buyer may sustain or incur by reason of such claim. Notwithstanding anything to the contrary herein, the provisions of this Section 13.1 shall survive the termination of this Agreement or the Closing. Buyer and Seller each acknowledge receipt of the pamphlet "The Law of Real Estate Agency."

13.2 Notices. All notices, demands, requests, consents and approvals which may, or are required to, be given by any party to any other party hereunder shall be in writing and shall be deemed to have been duly given if (i) delivered personally, (ii) sent by a nationally recognized overnight delivery service, or (iii) electronically transmitted with confirmation sent by another method specified in this Section 13.2 to:

Buyer at: Superintendent of Parks and Recreation  
100 Dexter Avenue North  
Seattle, WA 98109  
Attn: Superintendent  
Telecopier No. (206) 233-7023

With a copy to: Mayor's Office  
City Hall, 600 Fourth Avenue, 6<sup>th</sup> Floor  
P.O. Box 94745  
Seattle, WA 98124-4745  
Attn: Jacqueline K. Kirn  
Telecopier No. (206) 233-0085

With a copy to: Parks Real Estate  
800 Maynard Avenue S., Suite 300  
Seattle, WA 98134  
Attn: Terry Dunning

Telecopier No. (206) 233-7038

Seller at: Pacific Northwest Communities, LLC  
c/o American Eagle Communities  
10455 N. Central Expressway, Suite 109-332  
Dallas, Texas 75231  
Attn: Kathryn G. Thompson  
Telecopier No. (972) 272-3677

With a copy to: Foster Pepper PLLC  
1111 Third Avenue, Suite 3400  
Seattle, WA 98101  
Attn: Beth A. Clark  
Telecopier No. (206) 749-1916

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery.

13.3 Amendment, Waiver. No modification, termination or amendment of this Agreement may be made except by written agreement. No failure by Seller or Buyer to insist upon the strict performance of any covenant, agreement, or condition of this Agreement or to exercise any right or remedy shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. All the terms, provisions, and conditions of this Agreement shall inure to the benefit of and be enforceable by Seller's or Buyer's permitted successors and assigns.

13.4 Survival. All provisions of this Agreement which involve obligations, duties or rights to be performed after the Closing Date or the recording of the Deed, and all representations and warranties made in or to be made pursuant to this Agreement shall survive the Closing Date and/or the recording of the Deed only to the extent expressly provided herein.

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

13.6 Merger of Prior Agreements Reliance. This Agreement and the exhibits hereto constitute the final and complete agreement between the parties with respect to the purchase and sale of the Capehart Property and supersede all prior and contemporaneous agreements, letters of intent and understandings between the parties hereto relating to the subject matter of this Agreement. There are no oral or other agreements, including but not limited to any representations or warranties, which modify

or affect this Agreement. Seller shall not be bound by, nor liable for, any warranties, representations or statements of fact or opinion made by any other person, partnership, corporation or other entity, including, without limitation, the Title Company, any surveyor and any consultants. Buyer acknowledges to Seller that in entering into this Agreement, Buyer is not relying on any warranties except those expressly set forth herein.

13.7 No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Buyer and Seller. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

13.8 Governing Law; Time. This Agreement and the rights of the parties hereto shall be governed by and construed in accordance with the internal laws of the State of Washington. "Day" as used herein means a calendar day and "business day" means any day on which commercial banks are generally open for business. Any period of time which would otherwise end on a non-business day shall be extended to the next following business day. Time is of the essence of this Agreement.

13.9 Exhibits. All exhibits attached hereto or referenced herein are incorporated in this Agreement.

13.10 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such provisions had not been contained herein.

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

13.12 Assignment. Neither party shall assign or transfer or permit the assignment or transfer of its right or obligations under this Agreement without the prior written consent of the other, any such assignment or transfer without such prior consent being hereby declared null and void.

13.13 Parties' Cooperation. In instances where either party reasonably requires the cooperation or assistance of the other party in connection with satisfying any of the terms and conditions of this Agreement, each party agrees to provide such reasonable cooperation to the other party. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to influence, shorten, change or circumvent the normal

procedures and processes of any department of the City of Seattle with respect to its permitting or land use, planning, environmental or building review and approval.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year first above written.

SELLER: PACIFIC NORTHWEST COMMUNITIES, LLC,  
a Delaware limited liability company

By: American Eagle Northwest, LLC, its  
Managing Member

By: \_\_\_\_\_  
Kathryn G. Thompson  
Authorized Agent

BUYER: THE CITY OF SEATTLE, a Washington  
municipal corporation

By: \_\_\_\_\_  
Gregory J. Nickels, Mayor

List of Exhibits

- EXHIBIT A - Legal Description and Depiction of the Capehart Property (including boundaries of Phase 1 Lot and Phase 2 Lot)
- EXHIBIT B - Legal Description and Depiction of Historic Properties
- EXHIBIT C - Seller's Reserved Easements
- EXHIBIT D - Pro Forma Title Policies
- EXHIBIT E - Form of Deed from Navy to Seller (See Sec 3.1(a))
- EXHIBIT F - Form of Deed from Seller to Buyer Phase 1 Lot; Phase 2 Lot to be added (See Sec 1.2)
- EXHIBIT G - Scope of Work for Demolition (See Sec 5.1(e))
- EXHIBIT H - Park Boulevards Exhibit (See Sec 6.1(c))
- EXHIBIT I - Utilities Scope of Work (See Sec 6.1(d))
- EXHIBIT J - Utility Contract to be added (See Sec 6.1 (d))
- EXHIBIT K - Form of FIRPTA

EXHIBIT A-1

Legal Description of the Capehart Property

**Phase 1 Lot**

PORTIONS OF SECTIONS 15 AND 16, TOWNSHIP 25 NORTH, RANGE 3 EAST, W.M., IN KING COUNTY, WASHINGTON, BEING DESCRIBED AS FOLLOWS:  
BEGINNING AT A CITY OF SEATTLE MONUMENT AT THE INTERSECTION OF THE CENTERLINES OF EMERSON STREET AND 41ST AVENUE, A 3" CONCRETE MONUMENT WITH A 1/4" BRASS ROD INSIDE A MONUMENT CASE;  
THENCE WEST ALONG THE CENTERLINE OF EMERSON STREET THE BEARING NORTH 88°36'33" WEST, AS DISCLOSED IN AND REFERENCED IN QUITCLAIM DEED FILED UNDER RECORDING NO. 8005070540, RECORDS OF KING COUNTY, WASHINGTON, A DISTANCE OF 525.25 FEET TO A CITY OF SEATTLE MONUMENT AT THE INTERSECTION OF THE CENTERLINES OF EMERSON STREET AND MAGNOLIA BOULEVARD, A 4"X 4" CONCRETE MONUMENT WITH A 1/4" BRASS ROD INSIDE A MONUMENT CASE;  
THENCE NORTH 35°39'28" WEST, A DISTANCE OF 2,326.29 FEET TO A PARTIALLY BROKEN 4"X 4" CONCRETE MONUMENT, ORIGINALLY WITH 1 1/2" BRASS CAP MARKED "USN CH-1", AND THE TRUE POINT OF BEGINNING;  
THENCE NORTH 89°46'40" WEST, A DISTANCE OF 321.36 FEET TO A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "U.S.N. CH-2";  
THENCE NORTH 45°45'44" WEST, A DISTANCE OF 271.52 FEET TO A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "USN CH-3";  
THENCE NORTH 75°10'08" WEST, A DISTANCE OF 142.34 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 1E";  
THENCE NORTH 10°39'37" WEST, A DISTANCE OF 193.63 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 2E";  
THENCE NORTH 47°09'39" WEST, A DISTANCE OF 40.17 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 3E";  
THENCE SOUTH 86°22'39" WEST, A DISTANCE OF 76.74 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 4E" AND THE BEGINNING OF A NON-TANGENT 161.00 FOOT-RADIUS CURVE CONCAVE TO THE SOUTHEAST, SAID POINT BEARS SOUTH 80°39'35" WEST FROM THE RADIUS POINT THEREOF;  
THENCE NORTHERLY AND EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 299.80 FEET THROUGH A CENTRAL ANGLE OF 106°41'28" TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 5E" AND THE POINT OF TANGENCY;  
THENCE SOUTH 82°38'57" EAST ALONG A TANGENT LINE A DISTANCE OF 74.72 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 6E";  
THENCE NORTH 50°46'52" EAST, A DISTANCE OF 59.64 FEET TO A TACK IN LEAD WITH COIN STAMPED "LS 30817";  
THENCE SOUTH 53°22'06" EAST A DISTANCE OF 95.59 FEET TO A 1/2" REBAR AND CAP STAMPED "LS 38017";  
THENCE SOUTH 82°09'27" EAST A DISTANCE OF 217.89 FEET TO A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "USN CH-9";  
THENCE SOUTH 00°30'06" WEST A DISTANCE OF 511.86 FEET TO A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "USN CH-10";  
THENCE SOUTH 88°36'15" EAST A DISTANCE OF 208.08 FEET TO A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "USN CH-11";  
THENCE SOUTH 00°36'16" WEST A DISTANCE OF 50.14 FEET TO THE TRUE POINT OF BEGINNING.

## Phase 2 Lot

PORTIONS OF THE SOUTHEAST QUARTER OF SECTION 9, AND THE NORTHEAST QUARTER OF SECTION 16, ALL IN TOWNSHIP 25 NORTH, RANGE 3 EAST, W.M., SHOWN ON RECORD OF SURVEY RECORDED UNDER RECORDING NO. 20050124900001, RECORDS OF KING COUNTY, WASHINGTON AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A CITY OF SEATTLE MONUMENT AT THE INTERSECTION OF THE CENTERLINES OF EMERSON STREET AND 41ST AVENUE, A 3" CONCRETE MONUMENT WITH A 1/4" BRASS ROD INSIDE A MONUMENT CASE;

THENCE WEST ALONG THE CENTERLINE OF EMERSON STREET THE BEARING NORTH 88°36'33" WEST AS DISCLOSED IN AND REFERENCED IN QUITCLAIM DEED RECORDED UNDER RECORDING NO. 8005070540, RECORDS OF KING COUNTY, WASHINGTON, A DISTANCE OF 525.25 FEET TO A CITY OF SEATTLE MONUMENT AT THE INTERSECTION OF THE CENTERLINES OF EMERSON STREET AND MAGNOLIA BOULEVARD, A 4"X 4" CONCRETE MONUMENT WITH A 1/4" BRASS ROD INSIDE A MONUMENT CASE;

THENCE NORTH 35°39'28" WEST A DISTANCE OF 2,326.29 FEET TO A PARTIALLY BROKEN 4"X 4" CONCRETE MONUMENT, ORIGINALLY WITH 1 1/2" BRASS CAP MARKED "USN CH-1";

THENCE NORTH 89°46'40" WEST A DISTANCE OF 321.36 FEET TO A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "USN CH-2";

THENCE NORTH 45°45'44" WEST A DISTANCE OF 271.52 FEET TO A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "USN CH-3";

THENCE NORTH 75°10'08" WEST A DISTANCE OF 142.34 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 1E" AND THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 75°10'08" WEST A DISTANCE OF 57.08 FEET TO A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "USN CH-4";

THENCE SOUTH 30°51'28" WEST A DISTANCE OF 103.69 FEET TO A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "USN CH-5";

THENCE SOUTH 61°22'19" WEST A DISTANCE OF 122.67 FEET TO A 4"X 4" CONCRETE MONUMENT WITH A TACK AND LEAD;

THENCE NORTH 88°25'02" WEST A DISTANCE OF 657.65 FEET TO A 1/2" REBAR AND CAP STAMPED "LS 38017";

THENCE NORTH 01°09'32" EAST A DISTANCE OF 852.24 FEET TO A TACK IN LEAD WITH COIN STAMPED "LS 38017";

THENCE NORTH 65°15'20" EAST A DISTANCE OF 241.19 FEET TO A 1/2" REBAR AND CAP STAMPED "LS 38017";

THENCE SOUTH 88°20'28" EAST A DISTANCE OF 428.85 FEET TO A 4"X 4" CONCRETE MONUMENT WITH A TACK AND LEAD;

THENCE CONTINUING SOUTH 88°20'28" EAST A DISTANCE OF 63.08 FEET TO A 1/2" REBAR AND CAP STAMPED "LS 38017";

THENCE SOUTH 37°21'22" EAST A DISTANCE OF 499.60 FEET TO A TACK IN LEAD WITH COIN STAMPED "LS 38017";

THENCE SOUTH 50°46'52" WEST A DISTANCE OF 59.64 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 6E";

THENCE NORTH 82°38'57" WEST A DISTANCE OF 74.72 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 5E" AND THE BEGINNING OF A TANGENT 161.00 FOOT-RADIUS CURVE CONCAVE TO THE SOUTHEAST;

THENCE WESTERLY AND SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 299.80 FEET THROUGH A CENTRAL ANGLE OF 106°41'28" TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 4E";

THENCE LEAVING SAID CURVE ALONG A NON-RADIAL LINE NORTH 86°22'39" EAST A DISTANCE OF 76.74 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 3E";

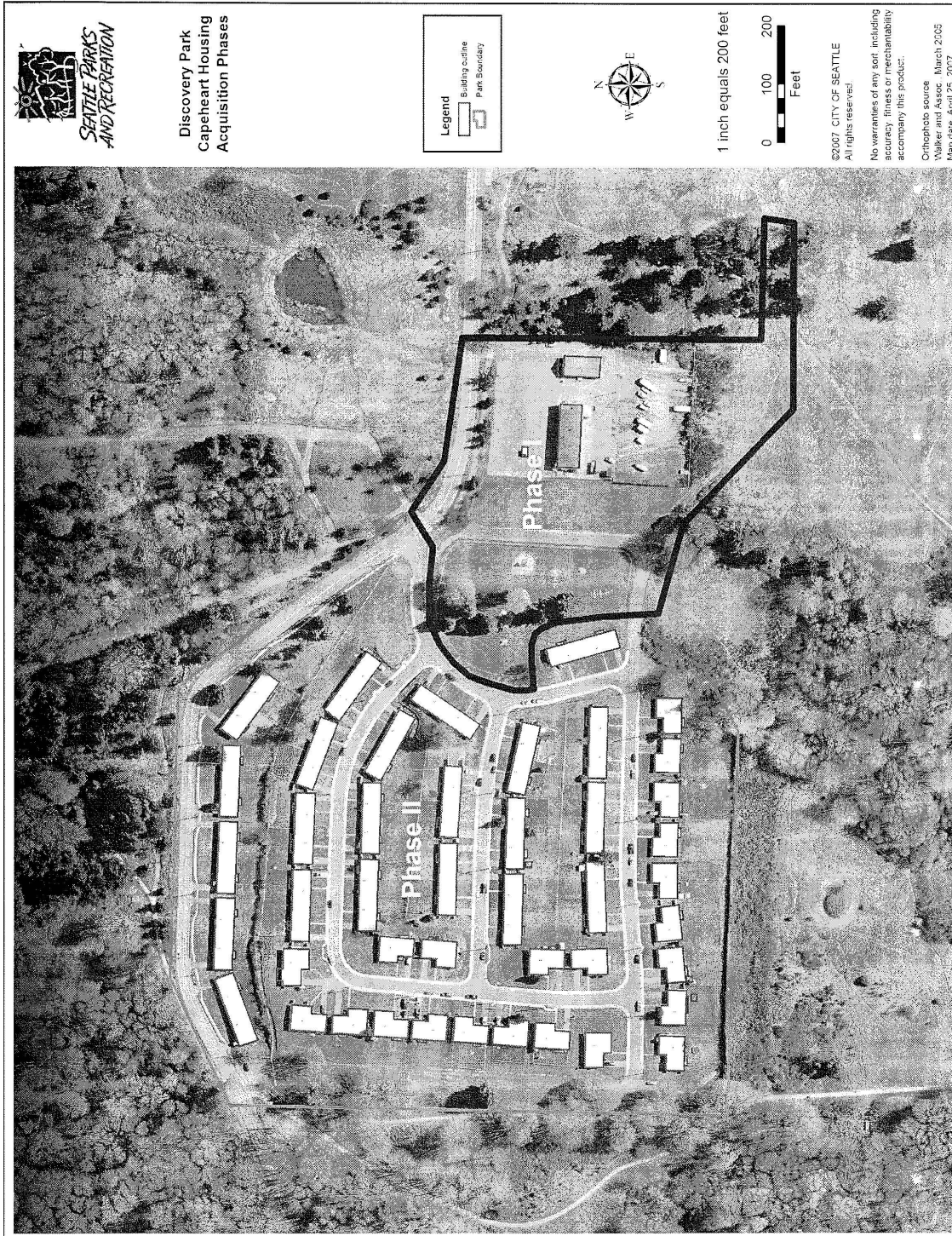
THENCE SOUTH 47°09'39" EAST A DISTANCE OF 40.17 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 2E";



THENCE SOUTH 10°39'37" EAST A DISTANCE OF 193.63 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 1E" AND THE TRUE POINT OF BEGINNING.

EXHIBIT A-2

Depiction of the Capehart Property



## EXHIBIT B-1

### Legal Description of Historic Properties

#### PARCEL A – WASHINGTON AVENUE SOUTH HOUSING

Commencing at a City of Seattle monument at the intersection of the centerlines of Emerson Street and 41st Avenue;  
Thence North 88°36'33" West a distance of 525.25 feet to a City of Seattle monument at the intersection of the centerlines of Emerson Street and Magnolia Boulevard;  
Thence North 08°16'29" West a distance of 796.10 feet to an existing concrete monument and the True Point of Beginning;  
Thence North 20°49'05" West a distance of 161.74 feet to an existing concrete monument;  
Thence North 10°08'29" West a distance of 202.99 feet to an existing concrete monument;  
Thence North 88°37'08" East a distance of 304.74 feet to an existing concrete monument;  
Thence South 01°14'42" West a distance of 267.98 feet to an existing concrete monument;  
Thence South 66°15'38" West a distance of 224.62 feet to the True Point of Beginning.

Said parcel containing 1.93 acres, more or less.

#### PARCEL B - WASHINGTON AVENUE NORTH HOUSING

Commencing at a City of Seattle monument at the intersection of the centerlines of Emerson Street and 41st Avenue;  
Thence North 88°36'33" West a distance of 525.25 feet to a City of Seattle monument at the intersection of the centerlines of Emerson Street and Magnolia Boulevard;  
Thence North 09°19'29" West a distance of 1482.86 feet to an existing concrete monument and the True Point of Beginning;  
Thence North 05°31'26" East a distance of 498.95 feet to an existing concrete monument;  
Thence North 41°19'22" East a distance of 274.64 feet to an existing concrete monument;  
Thence South 22°07'09" East a distance of 382.53 feet to an existing concrete monument;  
Thence South 89°54'10" West a distance of 150.87 feet to an existing concrete monument;  
Thence South 08°42'49" West a distance of 141.38 feet to an existing concrete monument;  
Thence South 84°45'16" East a distance of 149.30 feet to an existing concrete monument;  
Thence South 01°48'56" West a distance of 173.59 feet to an existing concrete monument;  
Thence South 86°27'02" West a distance of 344.97 feet to the True Point of Beginning.

Said parcel containing 3.76 acres, more or less.

#### PARCEL D – MONTANA CIRCLE HOUSING

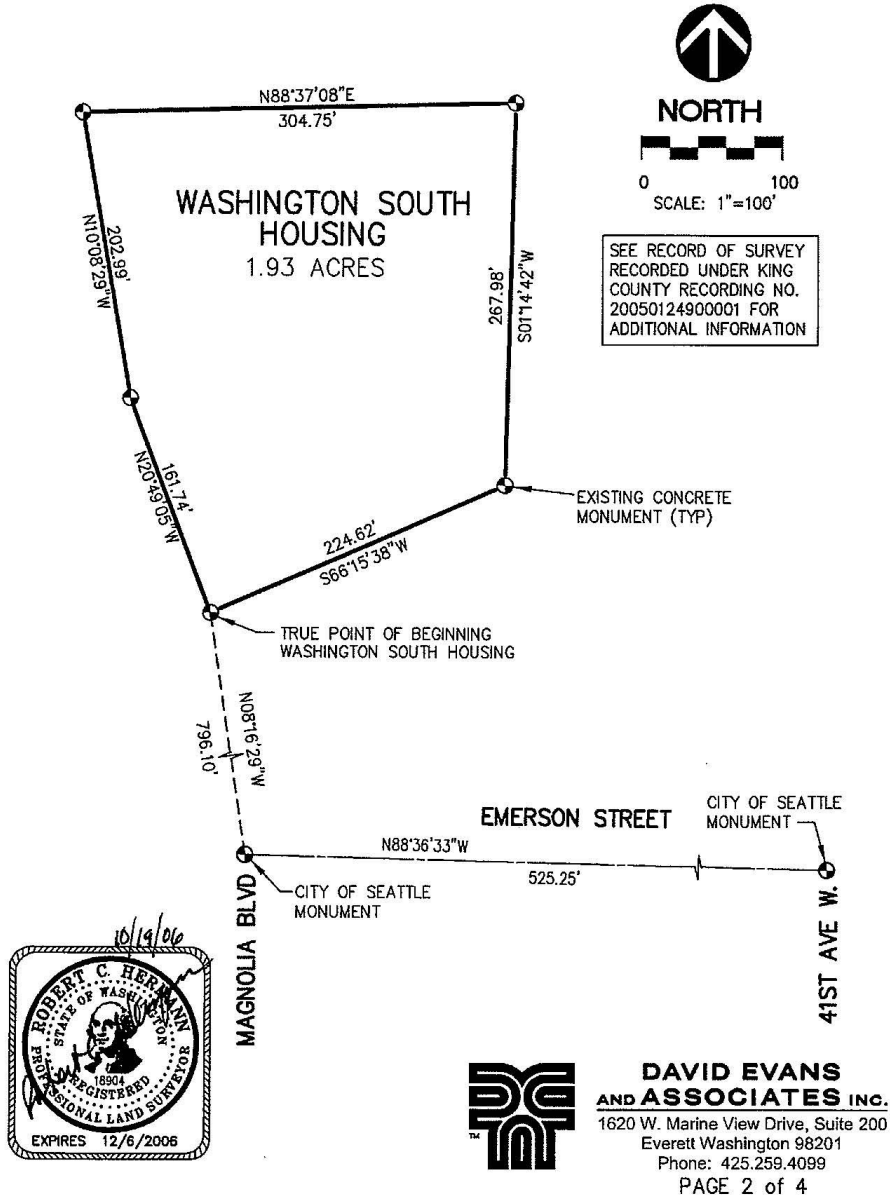
Commencing at a City of Seattle monument at the intersection of the centerlines of Emerson Street and 41st Avenue;  
Thence North 88°36'33" West a distance of 525.25 feet to a City of Seattle monument at the intersection of the centerlines of Emerson Street and Magnolia Boulevard;  
Thence North 20°02'12" West a distance of 2605.50 feet to an existing rebar and cap stamped "LS 38017" and the True Point of Beginning;  
Thence North 05°56'38" West a distance of 567.64 feet to an existing concrete monument;  
Thence South 84°30'38" East a distance of 199.42 feet to an existing concrete monument;  
Thence South 16°06'45" East a distance of 182.84 feet to an existing concrete monument;  
Thence South 51°02'25" East a distance of 154.40 feet to an existing concrete monument;  
Thence South 04°10'23" West a distance of 199.73 feet to an existing concrete monument;  
Thence South 36°05'53" West a distance of 95.65 feet to an existing rebar and cap stamped "LS 38017";  
Thence North 89°06'47" West a distance of 239.67 feet to the True Point of Beginning.

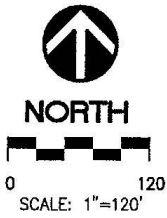
Said parcel containing 3.47 acres, more or less.

All situated in the City of Seattle, County of King, State of Washington.

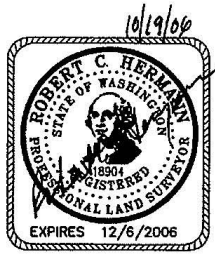
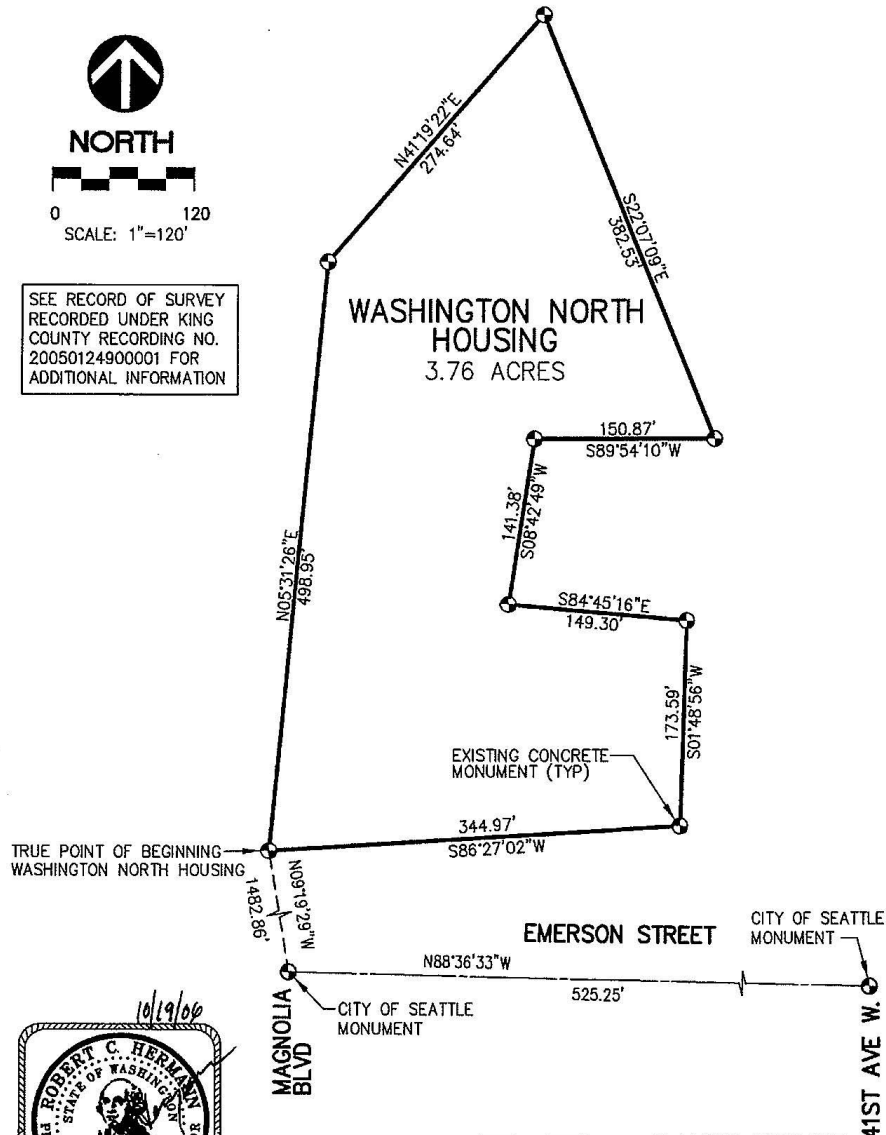
EXHIBIT B-2

Depiction of Historic Properties





SEE RECORD OF SURVEY  
RECORDED UNDER KING  
COUNTY RECORDING NO.  
20050124900001 FOR  
ADDITIONAL INFORMATION



**DAVID EVANS  
AND ASSOCIATES INC.**  
1620 W. Marine View Drive, Suite 200  
Everett Washington 98201  
Phone: 425.259.4099  
PAGE 3 of 4

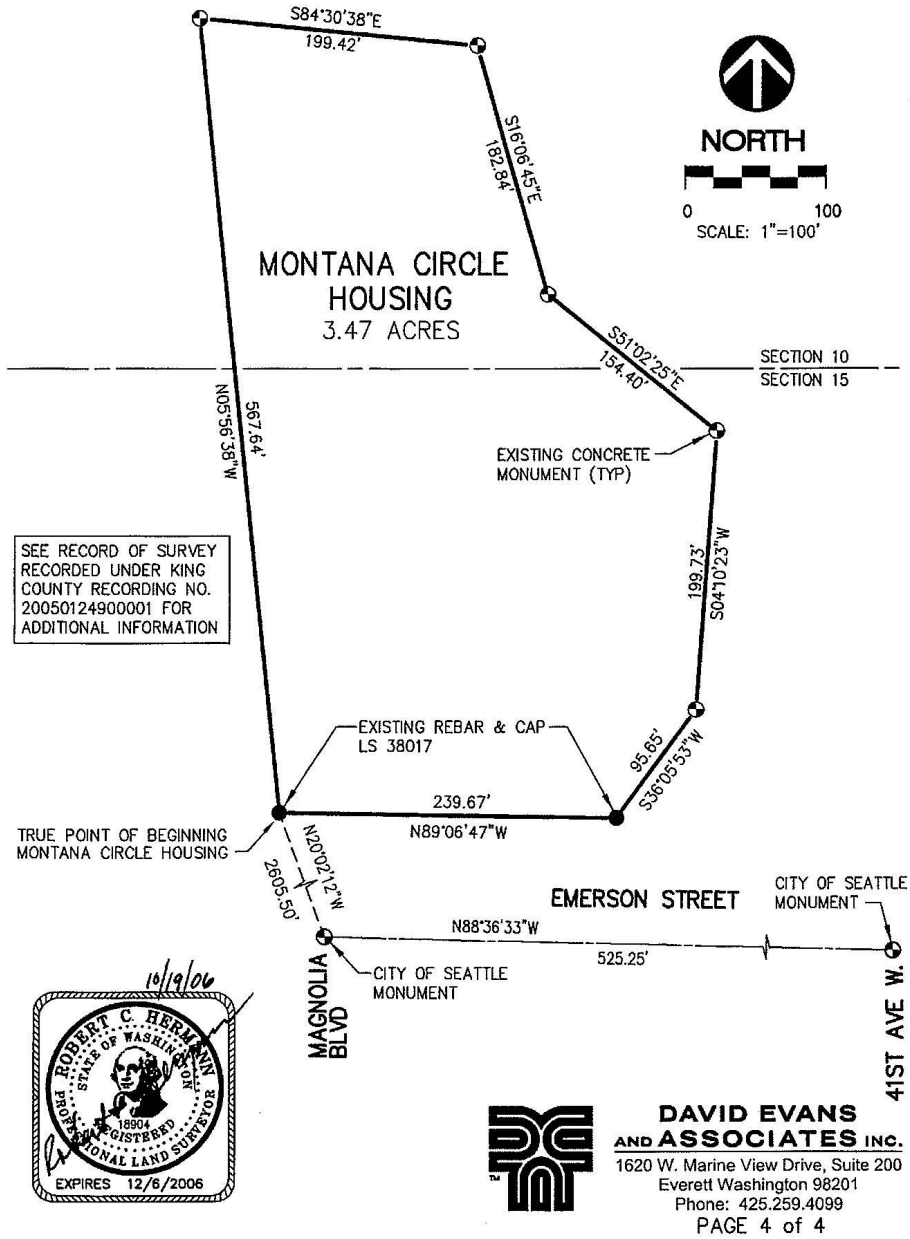


EXHIBIT C

Seller's Reserved Easements

Seller hereby reserves a non-exclusive right, title and interest in and to all easements for access and utilities of any kind over, under and across the Phase 1 Lot for the benefit of the Phase 2 Lot, which beneficial easements shall be a burden on the Phase 1 Lot until and unless the Phase 2 Lot is conveyed by Seller to Buyer

EXHIBIT D-1

Pro Forma Title Policy Phase 1 Lot  
(See 10 pages following)





**First American Title Insurance Company  
National Commercial Services**

**2101 Fourth Avenue, Suite 800  
Seattle, WA 98121**

June 08, 2007

City of Seattle

Title Officer: Dave Stuczynski  
Phone: (206)615-3160

Order Number: NCS-296364-WA1

Escrow Officer: Donna F. Koerber  
Phone: (206)615-3021

Buyer: City of Seattle, a Municipal corporation

Property: , Seattle, WA

Attached please find the following item(s):

A Policy of Title Insurance

Thank You for your confidence and support. We at First American Title Insurance Company maintain the fundamental principle:

***Customer First!***

# Policy of Title Insurance



ISSUED BY

**First American Title Insurance Company**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a CA corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

*First American Title Insurance Company*

BY *Curt B. Johnson* PRESIDENT

ATTEST *Marilyn Kelly* SECRETARY



**AMENDED  
PRO FORMA POLICY DATED AS OF JUNE 19, 2007  
SCHEDULE A**

Amount of Insurance: \$2,775,000.00

Policy Number: NCS-296364-WA1

Date of Policy: DATE OF RECORDING

1. Name of insured:

City of Seattle, a Municipal corporation of the State of Washington

2. The estate or interest in the land which is covered by this policy is:

Fee Simple

3. Title to the estate or interest in the land is vested in:

City of Seattle, a Municipal corporation of the State of Washington

4. The land referred to in this policy is described as follows:

Real property in the City of Seattle, County of King, State of Washington, described as follows:

PORTIONS OF SECTIONS 15 AND 16, TOWNSHIP 25 NORTH, RANGE 3 EAST, W.M., IN KING COUNTY, WASHINGTON, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A CITY OF SEATTLE MONUMENT AT THE INTERSECTION OF THE CENTERLINES OF EMERSON STREET AND 41ST AVENUE, A 3" CONCRETE MONUMENT WITH A 1/4" BRASS ROD INSIDE A MONUMENT CASE;  
THENCE WEST ALONG THE CENTERLINE OF EMERSON STREET THE BEARING NORTH 88°36'33" WEST, AS DISCLOSED IN AND REFERENCED IN QUITCLAIM DEED FILED UNDER RECORDING NO. 8005070540, RECORDS OF KING COUNTY, WASHINGTON, A DISTANCE OF 525.25 FEET TO A CITY OF SEATTLE MONUMENT AT THE INTERSECTION OF THE CENTERLINES OF EMERSON STREET AND MAGNOLIA BOULEVARD, A 4"X 4" CONCRETE MONUMENT WITH A 1/4" BRASS ROD INSIDE A MONUMENT CASE;  
THENCE NORTH 35°39'28" WEST, A DISTANCE OF 2,326.29 FEET TO A PARTIALLY BROKEN 4"X 4" CONCRETE MONUMENT, ORIGINALLY WITH 1 1/2" BRASS CAP MARKED "USN CH-1", AND THE TRUE POINT OF BEGINNING;  
THENCE NORTH 89°46'40" WEST, A DISTANCE OF 321.36 FEET TO A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "U.S.N. CH-2";  
THENCE NORTH 45°45'44" WEST, A DISTANCE OF 271.52 FEET TO A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "USN CH-3";  
THENCE NORTH 75°10'08" WEST, A DISTANCE OF 142.34 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 1E";  
THENCE NORTH 10°39'37" WEST, A DISTANCE OF 193.63 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 2E";  
THENCE NORTH 47°09'39" WEST, A DISTANCE OF 40.17 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 3E";

THENCE SOUTH 86°22'39" WEST, A DISTANCE OF 76.74 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 4E" AND THE BEGINNING OF A NON-TANGENT 161.00 FOOT-RADIUS CURVE CONCAVE TO THE SOUTHEAST, SAID POINT BEARS SOUTH 80°39'35" WEST FROM THE RADIUS POINT THEREOF;  
THENCE NORTHERLY AND EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 299.80 FEET THROUGH A CENTRAL ANGLE OF 106°41'28" TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 5E" AND THE POINT OF TANGENCY;  
THENCE SOUTH 82°38'57" EAST ALONG A TANGENT LINE A DISTANCE OF 74.72 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 6E";  
THENCE NORTH 50°46'52" EAST, A DISTANCE OF 59.64 FEET TO A TACK IN LEAD WITH COIN STAMPED "LS 30817";  
THENCE SOUTH 53°22'06" EAST A DISTANCE OF 95.59 FEET TO A 1/2" REBAR AND CAP STAMPED "LS 38017";  
THENCE SOUTH 82°09'27" EAST A DISTANCE OF 217.89 FEET TO A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "USN CH-9";  
THENCE SOUTH 00°30'06" WEST A DISTANCE OF 511.86 FEET T A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "USN CH-10";  
THENCE SOUTH 88°36'15" EAST A DISTANCE OF 208.08 FEET TO A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "USN CH-11";  
THENCE SOUTH 00°36'16" WEST A DISTANCE OF 50.14 FEET TO THE TRUE POINT OF BEGINNING.

(ALSO KNOWN AS CAPEHART HOUSING SITE PHASE I)

## SCHEDULE B

### EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Easement, including terms and provisions contained therein:  
 Recording Information: May 17, 1909 under Recording No. 614777  
 In Favor of: City of Seattle  
 For: Sewer and streets  
 Affects: as described therein
  
2. Easement, including terms and provisions contained therein:  
 Recording Information: April 20, 1967 under Recording No. 6165044  
 In Favor of: Municipality of Metropolitan Seattle, a municipal corporation  
 For: 144-inch North Trunk sewer and drainage tunnel  
 Affects: as described therein
  
3. Easement, including terms and provisions contained therein:  
 Recording Information: May 7, 1980 under Recording No. 8005070540  
 In Favor of: City of Seattle, a municipal corporation  
 For: Access roads and utilities  
 Affects: as described therein
  
4. Easement, including terms and provisions contained therein:  
 Recording Information: August 29, 1990 under Recording No. 9008290981  
 In Favor of: Municipality of Metropolitan Seattle  
 For: Underground water/sewage conveyance tunnel  
 Affects: as described therein
  
- Said instrument is a re-record of recording no(s). 9004191004, recorded April 19, 1990.
  
5. Easement, including terms and provisions contained therein:  
 Recording Information: April 17, 1991 under Recording No. 9104170408  
 In Favor of: City of Seattle, Water Department  
 For: Water line and appurtenances  
 Affects: as described therein
  
6. Easement, including terms and provisions contained therein:  
 Recording Information: April 18, 1991 under Recording No. 9104181018  
 In Favor of: Municipality of Metropolitan Seattle  
 For: Access road and general underground utility corridor  
 Affects: as described therein

7. Easement, including terms and provisions contained therein:  
Recording Information: September 10, 1993 under Recording No. 9309101283  
In Favor of: Municipality of Metropolitan Seattle, a municipal coporation  
For: Access to municipality facilities  
Affects: as described therein
  
8. Liability, if any, for pro-rata portion of **Real Property** taxes which are carried on the King County Tax Rolls, as tax account no. 162503-9005-06, are exempt.  
  
Affects: The land and other property.
  
9. Covenants, conditions, restrictions and/or easements:  
Recorded:  
Recording No.:
  
10. Easement, including terms and provisions contained therein:  
Recording Information:  
In Favor of:  
For:  
Affects:

### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to
  - (i) the occupancy, use, or enjoyment of the land;
  - (ii) the character, dimensions or location of any improvement now or hereafter erected on the land;
  - (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or
  - (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to the Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

### CONDITIONS AND STIPULATIONS

#### 1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

- (a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.
- (b) "insured claimant": an insured claiming loss or damage.
- (c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.
- (d) "land": the land described or referred to in Schedule (A), and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A), nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
- (e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions from Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.
- (g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

#### 2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either

- (i) an estate or interest in the land, or
- (ii) an indebtedness secured by a purchase money mortgage given to an insured.

#### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing

- (i) in case of any litigation as set forth in Section 4(a) below,
- (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or
- (iii) if title to the estate or interest, an insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

**4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.**

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by an insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to an insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

**5. PROOF OF LOSS OR DAMAGE.**

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

**6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.**

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b) (i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

**7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or (ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.



The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

**8. APPORTIONMENT.**

If the land described in Schedule (A)(C) consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

**9. LIMITATION OF LIABILITY.**

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

**10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.**

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

**11. LIABILITY NONCUMULATIVE.**

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

**12. PAYMENT OF LOSS.**

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

**13. SUBROGATION UPON PAYMENT OR SETTLEMENT.**

**(a) The Company's Right of Subrogation.**

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

**(b) The Company's Rights Against Non-insured Obligors.**

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

**14. ARBITRATION.**

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.**

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

**16. SEVERABILITY.**

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

**17. NOTICES, WHERE SENT.**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at First American Title Insurance Company, 1 First American Way, Santa Ana, CA 92707, or to the office which issued this policy.

EXHIBIT D-2

Pro Forma Title Policy Phase 2 Lot  
(See 10 pages following)



**First American Title Insurance Company  
National Commercial Services**

**2101 Fourth Avenue, Suite 800  
Seattle, WA 98121**

June 08, 2007

City of Seattle

Seattle, WA

Title Officer: Dave Stuczynski  
Phone: (206)615-3160

Order Number: NCS-296366-WA1

Escrow Officer: Donna F. Koerber  
Phone: (206)615-3021

Buyer: City of Seattle, a municipal corporation

Property: , Seattle, WA

Attached please find the following item(s):

A Policy of Title Insurance

Thank You for your confidence and support. We at First American Title Insurance Company maintain the fundamental principle:

***Customer First!***

# Policy of Title Insurance



ISSUED BY

## First American Title Insurance Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a CA corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

*First American Title Insurance Company*

BY *Curt B. Johnson* PRESIDENT

ATTEST *Marilyn Kelley* SECRETARY



**AMENDED  
PRO FORMA POLICY AS OF JUNE 19, 2007  
SCHEDULE A**

Amount of Insurance: \$8,325,000.00

Policy Number: NCS-296366-WA1

Date of Policy: DATE OF RECORDING

1. Name of insured:

City of Seattle, a Municipal corporation of the State of Washington

2. The estate or interest in the land which is covered by this policy is:

Fee Simple

3. Title to the estate or interest in the land is vested in:

City of Seattle, a Municipal corporation of the State of Washington

4. The land referred to in this policy is described as follows:

Real property in the City of Seattle, County of King, State of Washington, described as follows:

PORTIONS OF THE SOUTHEAST QUARTER OF SECTION 9, AND THE NORTHEAST QUARTER OF SECTION 16, ALL IN TOWNSHIP 25 NORTH, RANGE 3 EAST, W.M., SHOWN ON RECORD OF SURVEY RECORDED UNDER RECORDING NO. 2005012490001, RECORDS OF KING COUNTY, WASHINGTON AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A CITY OF SEATTLE MONUMENT AT THE INTERSECTION OF THE CENTERLINES OF EMERSON STREET AND 41ST AVENUE, A 3" CONCRETE MONUMENT WITH A 1/4" BRASS ROD INSIDE A MONUMENT CASE;  
THENCE WEST ALONG THE CENTERLINE OF EMERSON STREET THE BEARING NORTH 88°36'33" WEST AS DISCLOSED IN AND REFERENCED IN QUITCLAIM DEED RECORDED UNDER RECORDING NO. 8005070540, RECORDS OF KING COUNTY, WASHINGTON, A DISTANCE OF 525.25 FEET TO A CITY OF SEATTLE MONUMENT AT THE INTERSECTION OF THE CENTERLINES OF EMERSON STREET AND MAGNOLIA BOULEVARD, A 4"X 4" CONCRETE MONUMENT WITH A 1/4" BRASS ROD INSIDE A MONUMENT CASE;  
THENCE NORTH 35°39'28" WEST A DISTANCE OF 2,326.29 FEET TO A PARTIALLY BROKEN 4"X 4" CONCRETE MONUMENT, ORIGINALLY WITH 1 1/2" BRASS CAP MARKED "USN CH-1";  
THENCE NORTH 89°46'40" WEST A DISTANCE OF 321.36 FEET TO A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "USN CH-2";  
THENCE NORTH 45°45'44" WEST A DISTANCE OF 271.52 FEET TO A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "USN CH-3";  
THENCE NORTH 75°10'08" WEST A DISTANCE OF 142.34 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE PARKS 1E" AND THE TRUE POINT OF BEGINNING;  
THENCE CONTINUING NORTH 75°10'08" WEST A DISTANCE OF 57.08 FEET TO A 4"X 4" CONCRETE MONUMENT WITH 1 1/2" BRASS CAP MARKED "USN CH-4";  
THENCE SOUTH 30°51'28" WEST A DISTANCE OF 103.69 FEET TO A 4"X 4" CONCRETE

MONUMENT WITH 1 1/2" BRASS CAP MARKED "USN CH-5";  
THENCE SOUTH 61°22'19" WEST A DISTANCE OF 122.67 FEET TO A 4"X 4" CONCRETE  
MONUMENT WITH A TACK AND LEAD;  
THENCE NORTH 88°25'02" WEST A DISTANCE OF 657.65 FEET TO A 1/2" REBAR AND CAP  
STAMPED "LS 38017";  
THENCE NORTH 01°09'32" EAST A DISTANCE OF 852.24 FEET TO A TACK IN LEAD WITH COIN  
STAMPED "LS 38017";  
THENCE NORTH 65°15'20" EAST A DISTANCE OF 241.19 FEET TO A 1/2" REBAR AND CAP  
STAMPED "LS 38017";  
THENCE SOUTH 88°20'28" EAST A DISTANCE OF 428.85 FEET TO A 4"X 4" CONCRETE  
MONUMENT WITH A TACK AND LEAD;  
THENCE CONTINUING SOUTH 88°20'28" EAST A DISTANCE OF 63.08 FEET TO A 1/2" REBAR  
AND CAP STAMPED "LS 38017";  
THENCE SOUTH 37°21'22" EAST A DISTANCE OF 499.60 FEET TO A TACK IN LEAD WITH COIN  
STAMPED "LS 38017";  
THENCE SOUTH 50°46'52" WEST A DISTANCE OF 59.64 FEET TO A 1/2" REBAR WITH AN  
ALUMINUM CAP MARKED "SEATTLE PARKS 6E";  
THENCE NORTH 82°38'57" WEST A DISTANCE OF 74.72 FEET TO A 1/2" REBAR WITH AN  
ALUMINUM CAP MARKED "SEATTLE PARKS 5E" AND THE BEGINNING OF A TANGENT 161.00  
FOOT-RADIUS CURVE CONCAVE TO THE SOUTHEAST;  
THENCE WESTERLY AND SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 299.80 FEET  
THROUGH A CENTRAL ANGLE OF 106°41'28" TO A 1/2" REBAR WITH AN ALUMINUM CAP  
MARKED "SEATTLE PARKS 4E";  
THENCE LEAVING SAID CURVE ALONG A NON-RADIAL LINE NORTH 86°22'39" EAST A  
DISTANCE OF 76.74 FEET TO A 1/2" REBAR WITH AN ALUMINUM CAP MARKED "SEATTLE  
PARKS 3E";  
THENCE SOUTH 47°09'39" EAST A DISTANCE OF 40.17 FEET TO A 1/2" REBAR WITH AN  
ALUMINUM CAP MARKED "SEATTLE PARKS 2E";  
THENCE SOUTH 10°39'37" EAST A DISTANCE OF 193.63 FEET TO A 1/2" REBAR WITH AN  
ALUMINUM CAP MARKED "SEATTLE PARKS 1E" AND THE TRUE POINT OF BEGINNING.

(ALSO KNOWN AS CAPEHART HOUSING SITE PHASE II)

**SCHEDULE B****EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Easement, including terms and provisions contained therein:  
Recording Information: May 17, 1909 under Recording No. 614777  
In Favor of: City of Seattle  
For: Sewer and streets  
Affects: as described therein
2. Easement, including terms and provisions contained therein:  
Recording Information: April 20, 1967 under Recording No. 6165044  
In Favor of: Municipality of Metropolitan Seattle, a municipal corporation  
For: 144-inch North Trunk sewer and drainage tunnel  
Affects: as described therein
3. Easement, including terms and provisions contained therein:  
Recording Information: May 7, 1980 under Recording No. 8005070540  
In Favor of: City of Seattle, a municipal corporation  
For: Access roads and utilities  
Affects: as described therein
4. Easement, including terms and provisions contained therein:  
Recording Information: August 29, 1990 under Recording No. 9008290981  
In Favor of: Municipality of Metropolitan Seattle  
For: Underground water/sewage conveyance tunnel  
Affects: as described therein

Said instrument is a re-record of recording no(s). 9004191004, recorded April 19, 1990.

5. Easement, including terms and provisions contained therein:  
Recording Information: April 17, 1991 under Recording No. 9104170408  
In Favor of: City of Seattle, Water Department  
For: Water line and appurtenances  
Affects: as described therein
6. Easement, including terms and provisions contained therein:  
Recording Information: April 18, 1991 under Recording No. 9104181018  
In Favor of: Municipality of Metropolitan Seattle  
For: Access road and general underground utility corridor  
Affects: as described therein



7. Easement, including terms and provisions contained therein:  
Recording Information: September 10, 1993 under Recording No. 9309101283  
In Favor of: Municipality of Metropolitan Seattle, a municipal coporation  
For: Access to municipality facilities  
Affects: as described therein
  
8. Liability, if any, for pro-rata portion of **Real Property** taxes which are carried on the King County Tax Rolls, as tax account no. 162503-9005-06, are exempt.  
  
Affects: The land and other property.

### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to
  - (i) the occupancy, use, or enjoyment of the land;
  - (ii) the character, dimensions or location of any improvement now or hereafter erected on the land;
  - (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or
  - (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to the Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

### CONDITIONS AND STIPULATIONS

#### 1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

- (a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.
- (b) "insured claimant": an insured claiming loss or damage.
- (c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.
- (d) "land": the land described or referred to in Schedule (A), and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A), nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
- (e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions from Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.
- (g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

#### 2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either

- (i) an estate or interest in the land, or
- (ii) an indebtedness secured by a purchase money mortgage given to an insured.

#### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing

- (i) in case of any litigation as set forth in Section 4(a) below,
- (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or
- (iii) if title to the estate or interest, an insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

**4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.**

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by an insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to an insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

**5. PROOF OF LOSS OR DAMAGE.**

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

**6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.**

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b) (i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

**7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or (ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

**8. APPORTIONMENT.**

If the land described in Schedule (A)(C) consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

**9. LIMITATION OF LIABILITY.**

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

**10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.**

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

**11. LIABILITY NONCUMULATIVE.**

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

**12. PAYMENT OF LOSS.**

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

**13. SUBROGATION UPON PAYMENT OR SETTLEMENT.**

**(a) The Company's Right of Subrogation.**

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

**(b) The Company's Rights Against Non-insured Obligors.**

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

**14. ARBITRATION.**

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.**

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

**16. SEVERABILITY.**

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

**17. NOTICES, WHERE SENT.**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at First American Title Insurance Company, 1 First American Way, Santa Ana, CA 92707, or to the office which issued this policy.

EXHIBIT E

Form of Deed from Navy to Seller  
(See 10 pages following)

When Recorded Return to:

American Eagle Northwest , LLC  
Attn: Kathryn Thompson  
10455 N. Central Expressway, Suite 109-332  
Dallas, Texas 75231

**Document Title:** Quitclaim Deed

**Reference Number of Document Assigned or Released:** Not Applicable

**Grantor's Name:** The United States of America, Department of the Navy

**Grantee's Name:** Pacific Northwest Communities, LLC, A Delaware Limited Liability Company

**Abbreviated Legal**

**Description:** Complete survey map and legal description appears on Exhibit B

QUITCLAIM DEED

This Deed is made this \_\_\_\_ day of \_\_\_\_\_, 2007, by THE UNITED STATES OF AMERICA, acting by and through the Department of the Navy (herein called "Grantor" or "USA"), in favor of PACIFIC NORTHWEST COMMUNITIES, LLC, a Delaware limited liability company (herein called "Grantee" or "Pacific Northwest Communities LLC").

RECITAL

This conveyance of property is made pursuant to the authority granted in Title 10 Section 2878 of the National Defense Authorization Act of 1996, which established the Military Housing Privatization Initiative (MHPI) and is attached hereto as Exhibit A. The property is currently leased to Pacific Northwest Communities LLC under a long-term lease privatization initiative and hereby is conveyed to Pacific Northwest Communities LLC pursuant to the authority granted in Section 2878 (a) of said Public Law.

CONVEYANCE

For valuable consideration as set forth in the attached Exhibit A, Grantor does hereby release, convey and quitclaim without warranty to Grantee, its successors and assigns, all Grantor's right, title and interest, together with all after-acquired title of Grantor and any and all rights in abutting streets, in and to the real property and all improvements thereon and appurtenances thereto (the "Property"), located in King County, Washington and described and depicted in Exhibit B attached hereto and incorporated herein by this reference ("USA Property"), subject to the following covenants, restrictions and conditions that shall be binding upon and enforceable against Grantee, its successors and assigns, in perpetuity, and to the below notices. The "Property" is defined separately as the Fort Lawton historical housing properties (parcels A, B, and D) and a portion of the capehart housing property C-1 in Exhibit B. Parcel C-2 will be sold at a later date and is not part of this conveyance.

REPRESENTATIONS, COVENANTS AND RESTRICTIONS

1. Grantee agrees to accept conveyance of the Property subject to all covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances of record.
2. Except as otherwise provided herein, or as otherwise provided by law, Grantee acknowledges that it has inspected, is aware of, and accepts the condition and state of



the Property, and that the Property is conveyed "as is" and "where is" without any representation, promise, agreement, or warranty on the part of Grantor regarding such condition and state of repair, or regarding the making of any alterations, improvements, repairs, or additions. Grantee further acknowledges that, subject to Grantor's obligations under paragraph 2 above, Grantor shall not be liable for any latent or patent defects in the Property, except to the extent required by applicable law.

3. The conditions, restrictions, reservations, and covenants set forth in this deed, unless subsequently released, are a binding servitude on the Property; shall inure to the benefit of and are binding on Grantor and Grantee, and their successors and assigns, and will be deemed to run with the land in perpetuity.

4. GRANTEE COVENANTS for itself, its heir, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said Grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, color, religion, or national origin in the practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner or any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

5. An Environmental Condition of Property (ECP) dated April 2007 has been completed. The ECP reference environmental conditions on the Property and potentially other properties not subject to this Deed. Grantee acknowledges that it has received copies of the ECP report; that it is aware of the notification contained therein; and that all documents referenced therein have been made available to Grantee.

6. ENVIRONMENTAL COVENANTS. The United States of America, in accordance with 42 USC 9620(h), hereby covenants and warrants to Grantee, its successors and assigns, that (1) all remedial action necessary to protect human health and the environment with respect to any hazardous substance remaining on the Property has been taken before the date of this deed and (2) any additional remedial action found to be necessary after this date shall be conducted by the United States of America, acting by and through the Department of the Navy. This covenant shall not apply to the extent that Grantee caused or contributed to any release or threatened release of any hazardous substance, pollutant, or contaminant. The United States of America, acting by and through the Department of the Navy, reserves necessary access rights to the Property in any case in which remedial or corrective action is found to be necessary after the date of this deed.

7. In connection with Grantor's covenant made in paragraph 6 above, Grantee agrees on behalf of itself, its successors and assigns, as a covenant running with the land, that Grantor, and its officers, agents, employees, contractors and subcontractors, shall have

the right, upon reasonable notice to Grantee, its successors and assigns, to enter upon the Property in any case in which a response or corrective action is found to be necessary at such Property after the date of this deed, such entry to be subject to the rights of tenants and parties lawfully in possession of the Property.

8. Grantor retains responsibility for any investigations and/or remedial actions associated with any preexisting environmental conditions at the Property. This includes investigations and/or remedial actions associated with documented environmental sites, as well as any areas of contamination identified subsequent to the conveyance that are attributed to historical activities of the Department of Defense.

9. Lead-Based Paint (LBP) Warning and Covenant:

- a. The Property contains residential dwellings. The Grantee is notified that the Property contains structures constructed prior to 1960 that are known to contain lead-based paint on interior and exterior surfaces. Lead from paint, paint chips, and dust can pose health hazards if not managed properly.
- b. Documentation on the known lead-based paint hazards can and should be obtained from the Navy's Lead-Based Paint Program Manager for Naval Base Kitsap. Additionally, the Grantee has been provided with a copy of the Federally-approved pamphlet on lead poisoning prevention. The Grantee hereby acknowledges receipt of all of the information described in this subparagraph.
- c. The Grantee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this Deed.
- d. The Grantor assumes no liability for remediation or damages for personal injury, illness, disability, or death, to the Grantee, its successors or assigns, lessees or to any other person, including members of the general public, arising from or incident to possession and/or use of any portion of the Property containing lead-based paint. The Grantee further agrees to indemnify and hold harmless the Navy, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death or property damage resulting from, related to, caused by or arising out of the possession and/or use of any portion of the Property containing lead-based paint. This section and the obligations of the Grantee hereunder shall survive the expiration or termination of this Deed and any conveyance of the Property to the Grantee. The Grantee's obligation hereunder shall apply whenever the United States of America incurs costs or liabilities for actions giving rise to liability under this section.

10. Notice of the Presence of Asbestos and Covenant:

a. Grantee is hereby informed and does acknowledge that asbestos or asbestos-containing materials ("ACM") has been found on the Property, as described in the EBS documentation.

b. Grantee covenants and agrees that its use and occupancy of the property will be in compliance with all applicable laws relating to asbestos; and that the Navy, DoD, and the United States Government assume no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, to Grantee, its successors or assigns, lessees, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property described in this Deed, whether Grantee, its successors or assigns have properly warned or failed to properly to warn the individual(s) injured.

11. HISTORIC PRESERVATION COVENANT. The following covenant applies solely to the Historic Properties A, B, and D. The real property being conveyed has been the subject of consultation under Section 106 of the National Historic Preservation Act that resulted in a Programmatic Agreement among the U.S. Navy, Washington State Historic Preservation Office and Advisory Council on Historic Preservation for the Privatization of Family Housing in Navy Region, Northwest executed in October, 2004 and amended in February, 2007. A copy of the Programmatic Agreement and amendment is on file with the Washington State Historic Preservation Office (SHPO). In addition, the Navy has documented interior and exterior conditions of historic properties at Fort Lawton; a copy of this documentation is also on file with the SHPO.

a. The Grantee hereby covenants on behalf of itself, its heirs, successors and assigns at all times to the United States, to maintain and preserve the real property conveyed under this deed in accordance with the following Historic Preservation Covenant:

b. The real property conveyed under this deed is within the property known as Parcels A, B and D at Fort Lawton ("Historic Properties"). A location map depicting Parcels A, B and D at Fort Lawton and a list of buildings and other site features that are considered contributing elements to the Fort Lawton Historic District, which is described and listed in the National Register of Historic Places (NRHP), are provided in Exhibit C to this Deed. The Historic Properties include areas 600 North (Parcel A), 600 South (Parcel B) and 900 (Parcel D), which contain 19 buildings (described in Tables 1 and 2 in Attachment 1 to this Covenant) that are referred to hereafter collectively as the "Buildings." Contributing elements to the Fort Lawton Historic District and the Historic Properties may include exterior facades, roofs, fenestration, scale, color, use of materials and mass, and landscape features. The Grantee hereby covenants on behalf of itself and its heirs, successors and assigns to maintain and preserve the Historic Properties in a manner that is consistent with the Secretary of Interior's Standards for

Rehabilitation and Guidelines for Rehabilitating Historic Buildings, with the following specific stipulations:

1. The Grantee agrees for itself, its heirs, successors and assigns to maintain the Historic Properties in a manner that preserves the historic integrity of the Historic Properties consistent with City of Seattle (City) zoning requirements and other applicable laws.
2. The Grantee agrees for itself, its heirs, successors and assigns to consult with the Washington State Historic Preservation Officer (SHPO) or its delegees or assigns and to initiate a process to resolve any potential adverse effects pursuant to 36 CFR 800.6 prior to the initiation of any construction, alteration, remodeling, demolition, disturbance of the ground surface or other action that would affect the integrity, appearance, or historic value of Buildings or setting. Actions that affect the integrity, appearance, or historic value of Buildings or setting may include changes in design, color or materials of exterior walls, windows or roofs, as well as actions that would affect the structural soundness of the Buildings or alter a significant interior feature. The reconstruction, repair, repainting or refinishing of presently existing elements of a Building is permitted without prior approval of the SHPO, provided the action is performed in accordance with the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.
3. The Grantee agrees for itself, its heirs, successors and assigns to provide the SHPO a copy of proposed plans and specifications pursuant to Paragraph 2 above to fully evaluate the proposed project or undertaking. Proposed plans and specifications submitted in accordance with this section shall be prepared to conform with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Within fourteen days (14) days of receipt of the proposed plans and specifications, the SHPO shall notify the requesting applicant in writing whether the proposed plans and specifications are incomplete and if they are incomplete, what additional information is required before the application is complete. Within fourteen (14) days of receiving the additional information, the SHPO shall notify the requesting applicant in writing whether the application is now complete or what additional information is necessary. Submission of the proposed plans and specifications shall be deemed to be complete if the SHPO does not notify the requesting applicant in writing by the deadlines in this section that the application is incomplete.
4. Within 28 days of receipt of complete plans and specifications pursuant to Paragraph 3 above, the SHPO will provide a written notice to the requesting applicant of approval of the proposed project or approval with modifications or request modification and re-submittal of the proposed project. If the SHPO does not provide written notice to the applicant within the 28-day period, the applicant may proceed with the proposed project.

5. The Grantee agrees for itself, its heirs, successors and assigns, that if any portion of the Historic Properties is destroyed by natural or human forces, including but not limited to fire, earthquake, or vandalism, such that the destroyed portion of the Historic Properties loses its historic integrity, it may, after consultation with the SHPO or its delegees or assigns, rebuild in accordance with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and the Secretary of Interior's Standards for Reconstruction, as applicable.
6. The Grantee agrees for itself, its heirs, successors, and assigns that the SHPO may at the discretion of the SHPO delegate and assign all or part of the SHPO rights and responsibilities identified herein to the City Landmarks Preservation Board (Board) with written notification to the Grantee.
7. In the event of a violation of this Historic Preservation Covenant, and in addition to any remedy now or hereafter provided by law or equity to the SHPO and its assigns or the United States Government, the SHPO and/or its assigns may institute action to enjoin said violation or to recover the costs of restoration of the Historic Properties. The successful party shall be entitled to recover all costs or expenses incurred in connection with such action, including all court costs and attorney's fees to the extent authorized by law.
8. The failure of the SHPO, its assigns or the United States Government to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.
9. This Historic Preservation Covenant is intended to run with the Historic Properties in perpetuity and is a binding servitude upon Grantee and its heirs, successors, and assigns.

Executed on the respective dates of acknowledgment below, to be effective as of the date first set forth above.

*[Remainder of page intentionally left blank; signature pages follow]*

**Grantor's Signature Page for Quitclaim Deed**

GRANTOR:

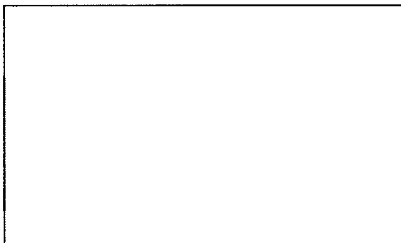
UNITED STATES OF AMERICA

By: \_\_\_\_\_  
Scott D. Forrest, Director,  
Special Venture Acquisition,  
Naval Facilities Engineering Command

District of Columbia     )  
  ) ss:  
  )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2007, before me, the undersigned, personally appeared Scott D. Forrest, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Director of Special Venture Acquisition, Naval Facilities Engineering Command, on behalf of the United States of America, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the United States of America for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

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



Use this space for Notary Seal/Stamp

\_\_\_\_\_  
(Signature of Notary)

**Grantee's Signature Page for Quitclaim Deed**

GRANTEE:

PACIFIC NORTHWEST COMMUNITIES, LLC,  
a Delaware limited liability company

By: American Eagle Northwest, LLC, a  
Delaware limited liability company, its  
Managing Member

By: \_\_\_\_\_  
Kathryn Thompson  
Authorized Representative

STATE OF TEXAS            )  
  ) ss.  
COUNTY OF DALLAS

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned, a Notary Public in and for the State of Texas, duly commissioned and sworn, personally appeared Kathryn Thompson, to me known to be the Managing Director of American Eagle Northwest, LLC, the Managing Member of Pacific Northwest Communities, LLC, a Delaware limited liability company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument.

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

Date: \_\_\_\_\_



Use this space for Notary Seal/Stamp

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Texas residing at : \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

## **EXHIBIT A TO QUITCLAIM DEED**

### **TITLE 10 SECTION 2878 CONVEYANCE OR LEASE OF EXISTING PROPERTY AND FACILITIES NATIONAL DEFENSE AUTHORIZATION ACT OF 1996**

SEC. 2878. (a) CONVEYANCE OR LEASE AUTHORIZED – The Secretary concerned may convey or lease property of facilities (including ancillary supporting facilities) to eligible entities for purposes of using the proceed of such conveyance or lease to carry out activities under this subchapter [10 USCS §§ 2871 et seq.].

(b) INAPPLICABILITY TO PROPERTY AT INSTALLATION APPROVED FOR CLOSURE. The authority of this section does not apply to property or facilities located on or near a military installation approved for closure under a base closure law.

(c) TERMS AND CONDITIONS.

- (1) The conveyance or lease of property or facilities under this section shall be for such consideration and upon such terms and conditions as the Secretary concerned considers appropriate for the purposes of this subchapter and to protect the interests of the United States.
- (2) As part or all of the consideration for a conveyance or lease under this section, the purchaser or lessor (as the case may be) shall enter into an agreement with the Secretary to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or sublease of a reasonable number of the housing units made available by the purchaser or lessee.

(d) INAPPLICABILITY OF CERTAIN PROPERTY MANAGEMENT LAWS. The conveyance or lease of property or facilities under this section shall not be subject to the following provisions of the law:

- (1) Section 2667 of this title.
- (2) Subtitle of title 40 [40USCS §§ 101 et seq.] and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.).
- (3) Section 1302 of title 40.
- (4) Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).



**EXHIBIT B TO QUITCLAIM DEED**  
**Legal Description and Survey Map**

*See pages following*

EXHIBIT F  
Form of Deed from Seller to Buyer Phase 1 Lot

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

City of Seattle Department of Parks and Recreation  
Parks Real Estate  
800 Maynard Avenue S., Suite 300  
Seattle, WA 98134  
Attn: Terry Dunning

QUIT CLAIM DEED

GRANTOR: Pacific Northwest Communities, LLC, a Delaware limited liability company

GRANTEE: The City of Seattle, a Washington municipal corporation

ABBREVIATED LEGAL  
DESCRIPTION:

\_\_\_\_\_  
Complete legal description and survey map appears on  
Exhibit A

ASSESSORS' TAX PARCEL ID NO.:

\_\_\_\_\_

REFERENCE NO.:

N/A

PACIFIC NORTHWEST COMMUNITIES, LLC, a Delaware limited liability company ("Grantor"), for \$10 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby conveys and quit claims to THE CITY OF SEATTLE, all right, title and interest, together with all after-acquired title of Grantor and any and all rights in abutting streets, in and to that certain real property and improvements thereon and appurtenances thereto in the County of King, State of Washington, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property") and SUBJECT TO, the exceptions set forth in Exhibit B attached hereto.

The Grantee acknowledges that it has inspected, is aware of, and accepts the condition and state of repair of the Property, and that the Property is conveyed, "**AS IS,**" and "**WHERE IS,**" without any representation, promise, agreement, or warranty on the part of the Grantor regarding such condition and state of repair, or regarding the making of any alterations, improvements, repairs, or additions or that the same is in a condition of fit to be used for the purpose for which intended and without warranties, express or implied under the Uniform Commercial Code of the State of Washington. The Grantee further acknowledges that the Grantor shall not be liable for any latent or patent defects in the Property, except to the extent required by applicable law.

Executed by Grantor and Grantee as of the respective dates of acknowledgment below, to be effective as of \_\_\_\_\_, 200\_.

*[Remainder of page intentionally left blank; signature pages follow]*

**Grantor's Signature Page for Quit Claim Deed**

**GRANTOR:**

PACIFIC NORTHWEST COMMUNITIES, LLC, a  
Delaware limited liability company

By: American Eagle Northwest, LLC, a Delaware  
limited liability company, its Managing Member

By: \_\_\_\_\_  
Kathryn G. Thompson, Authorized  
Representative

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Kathryn G. Thompson, to me known to be an Authorized Representative of American Eagle Northwest, LLC, the Managing Member of Pacific Northwest Communities, LLC, a Delaware limited liability company, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument.

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

Date: \_\_\_\_\_



\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington : \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_

Use this space for Notary Seal/Stamp

**Grantee's Signature Page for Quit Claim Deed**

**GRANTEE:**

THE CITY OF SEATTLE

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

STATE OF WASHINGTON     )  
  ) ss:  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that \_\_\_\_\_, to me known to be the \_\_\_\_\_ of THE CITY OF SEATTLE, the Washington municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

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

\_\_\_\_\_  
PRINT NAME:  
Notary Public in and for the State of Washington,  
\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

EXHIBIT A

Legal Description & Survey Map

Form of Deed from Seller to Buyer Phase 2 Lot  
(To be added per Section 1.2)

EXHIBIT G

Scope of Work for Demolition

**DEMOLITION SPECIFICATIONS AND STATEMENT OF WORK**

**THIS AGREEMENT**, Made as of **(Current Date)**, In the Year of **(Current Year)**,

Between the Owner: **Contact Name**  
**Street Address**  
**City, State Postal Code**  
**Contact Telephone**

And the Contractor: **Contact Name**  
**Street Address**  
**City, State Postal Code**  
**Contact Telephone**

For the Project: **Capehart Housing Demolition**  
**Project Address**

Division 1. General Requirements

**01000 – Purpose** – These specifications are designed to define specific processes to be used in the demolition of the sixty-six (66) housing units known as the Capehart units located in Discovery Park. This outline was created for use Pacific Northwest Communities, LLC to guide the demolition of these units. This Statement of Work will be used to contract the demolition and will be an attachment to the executed demolition contract. All demolition activities shall be performed in accordance with federal, state and local codes and regulations, except as expressly set forth herein, regardless of whether any permits or approvals are required in connection with demolition of the housing units on federally-owned property.

**01500 – Temporary Facilities and Controls** - This work shall consist of the application of temporary environmental control measures throughout the life of the project.

**01510 – Temporary Utilities** - All connections and extensions required to provide temporary utilities shall be made by the Contractor at the Contractor's expense.

**01511 – Temporary Electricity** – Contractor shall provide and install temporary power for construction site, if required. Connect to existing power service without disrupting local service requirements. Power feeder service characteristics shall be compatible with the service from which it is taken. Size, type and loading shall be per requirements as established by the National Electric Code (NEC). The contractor shall provide main service disconnect and over-current protection at a convenient location in accordance with the NEC. The Contractor shall provide power outlets for construction operations, with branch wiring and distribution boxes located as necessary and shall provide flexible power cords as required. Provide and install distribution equipment, wiring and outlets to provide single phase branch circuits for power and lighting.

**01514 – Temporary Heating, Cooling and Ventilation** – Not used.

**01515 – Temporary Lighting** – Not required.



**01517 – Temporary Telephone** – Contractor shall provide for emergency telephone service for the construction site superintendent.

**01518 – Temporary Water** – Contractor shall provide and install temporary water for construction site. Connect to an existing water source for construction operations.

**01520 – Construction Facilities** – No field offices or sheds shall be required or allowed.

**01523 – Sanitary Facilities** – Existing facilities shall not be used. Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of his employees as shall comply with laws and regulations. Temporary toilet facilities may consist of portable toilets. [The number shall be based on number of workers, 1 toilet per 15 workers.](#) Toilet facilities shall be kept supplied and clean and in sanitary condition until the completion of the work and then shall be removed from the site. Upon removal the site shall be properly cleaned, graded and restored to its original condition.

**01530 – Temporary Construction** - The contractor shall provide and maintain for duration of work all required temporary stairs, ladders, ramps, runways and hoists for use of all trades.

**01540 – Construction Aids** – The contractor shall provide all construction aids needed during construction which shall include but not limited to: hoists, cranes, etc.

**01542 – Construction Scaffolding and Platforms** – The contractor shall provide and maintain for duration of work all required temporary standing scaffolding.

**01550 – Vehicular Access and Parking** – Arrange parking areas to accommodate construction personnel. When site space is not adequate, contractor shall provide additional off-site parking. Contractor and construction personnel shall not park in or on adjacent park areas except as necessary for drop off/pick up of personnel and materials.

**01560 – Temporary Barriers and Enclosures** – The contractor shall provide barriers to prevent unauthorized entry into construction areas and to protect existing facilities and adjacent properties from damage arising from demolition and removal activities. Contractor shall install barricades and temporary walkways as may be required by governing authorities for public right of ways. Contractor shall install [chain link](#) fence and silt fencing or other protective barriers as may be required to protect the adjacent parks lands around the perimeter of the job site.

**01570 – Temporary Controls** - This work shall consist of the application of temporary measures throughout the life of the project to control erosion and siltation. Such measures shall include, but are not limited to, the use of berms, dikes, dams, sediment basins, fiber mats, silt fences, straw bales, washed gravel or crushed stone, mulch, grasses, slope drains, temporary seeding and other methods. Temporary erosion and siltation control measures as described herein, shall be applied to erodible material exposed by any activity associated with the construction and consistent with state and local control standard.

**01580 – Project Identification** – Not used

**01600 – Product Requirements (Scope of Work) – Not used.**

**01630 – Product Substitution Procedures – Not used.**

**01640 – Owner Furnished Products – Not used.**

**01700 – Execution Requirements** – The execution of all work shall be in strict accordance with these specifications. All work not specifically mentioned that is required to make the work complete and operational shall be included.

**Codes** – Demolition, removal and disposal activities shall be carried out as if federal, state and local laws and regulations applied to the job site, notwithstanding that permit may not be required. It is the responsibility shall comply with all applicable national, state and local building codes. It is the responsibility of the Contractor to insure that work is carried out in a manner consistent with all substantive requirements of such federal, state and local laws and regulations.

**Measurements** - The Contractor shall check and verify all dimensions and conditions before proceeding with construction. Do not scale drawings. Noted dimensions take precedence.

**Workmanship** - Workmanship shall conform to the best and highest standards of quality in each trade and shall include all items of fabrication, construction and installation. All work shall be completed by skilled tradesmen and mechanics.

**Insurance** - All bonding and insurance requirements shall be coordinated with the Owner prior to beginning construction. Any and all contractors and materialmen shall provide and be solely responsible for necessary barricades and safety precautions, and strictly adhere to all governing codes on safety, including the OSHA Act.

**01712 – Local Conditions** – All trees on the site shall be protected from damage during and as a result of demolition and removal activities. If in the opinion of the contractor, damage to any tree may result from demotion or removal activities; contractor shall first consult with the City of Seattle’s Senior Urban Forester at least 24 hours prior to taking any action which could reasonably be expected to damage or otherwise jeopardize any tree within the job site. The Senior Urban Forester can be contacted at (206) 684-4113.

The demolition site is surrounded by a public park maintained in a natural state and contractor shall take all commercially reasonable steps to provide for the protection of the surrounding environment including habitat of any endangered or protected animal or plant species, if any.

Contractor’s activities on the site shall not unreasonably interfere in any way with activities on the adjacent park lands without prior written permission of the City of Seattle’s Superintendent of Parks and Recreation, which permission shall not be unreasonably withheld. Contractor’s activities on the site or in transporting materials, debris, equipment, staff or any other demolition-related supplies shall in no way interfere with the operation of the King County Wastewater Facility located at the westerly terminus of Utah Street.

**01740 – Cleaning** - Construction site to be in a clean and orderly condition throughout the construction process. Contractor shall promptly remove all waste and surplus materials.

**01760 – Protecting Site** – Contractor shall protect the demolition site at all times in a commercially reasonable manner.

**01903 – Hazardous Materials Abatement** – Contractor shall abate any hazardous material or substance before beginning demolition. Such work shall be performed by a properly licensed and qualified hazardous material contractor.

**01904 – Hazardous Materials Removal and Disposal** – Contractor shall remove and dispose of any hazardous material before beginning demolition. Such work shall be performed by a properly licensed and qualified hazardous material contractor. All disposal activities shall comply with applicable regulations concerning disposal and transport of such materials. No uncovered loads of disposal materials are allowed within the City of Seattle.

Division 2. Site Work

**02000 – General** - Contractor shall review site documents and provide necessary site work, excavation and grading as required to complete the demolition project.

**02200 – Site Preparation** – The area of clearing shall be maintained within the limits shown on the appropriate site plans. [Contractor shall remove material from the site as it accumulates and shall not allow water to accumulate for more than 48 hours.](#)

**02220 – Site Demolition** – Contractor shall provide all labor, materials and equipment to perform the required demolition of existing units above the slab foundations. All utility connections will be capped approximately five (5) feet from the building foundation edge. All above ground secondary electrical distribution lines shall be disconnected and removed. All demolition debris shall be disposed at an approved, permitted disposal facility. Contractor shall install chain link fencing around the area of demolition work. Contractor shall protect all adjacent areas not to be demolished. Contractor shall remove all debris from job site and dispose of it as described herein. A representative of the Seattle Department of Parks and Recreation shall have the right to be present during any on-site demolition. Contractor shall provide Seattle Department of Parks and Recreation, contact no. 206 684-4860 (Terry Dunning), with at least 48 hours notice prior to commencement of demolition activities.

EXHIBIT H

Park Boulevards Exhibit  
(See 1-page diagram following)

**NOTE # 1**

The Discovery Park roadways (commonly known names) listed below and noted graphically to the left are the target roadways for boulevard designation.

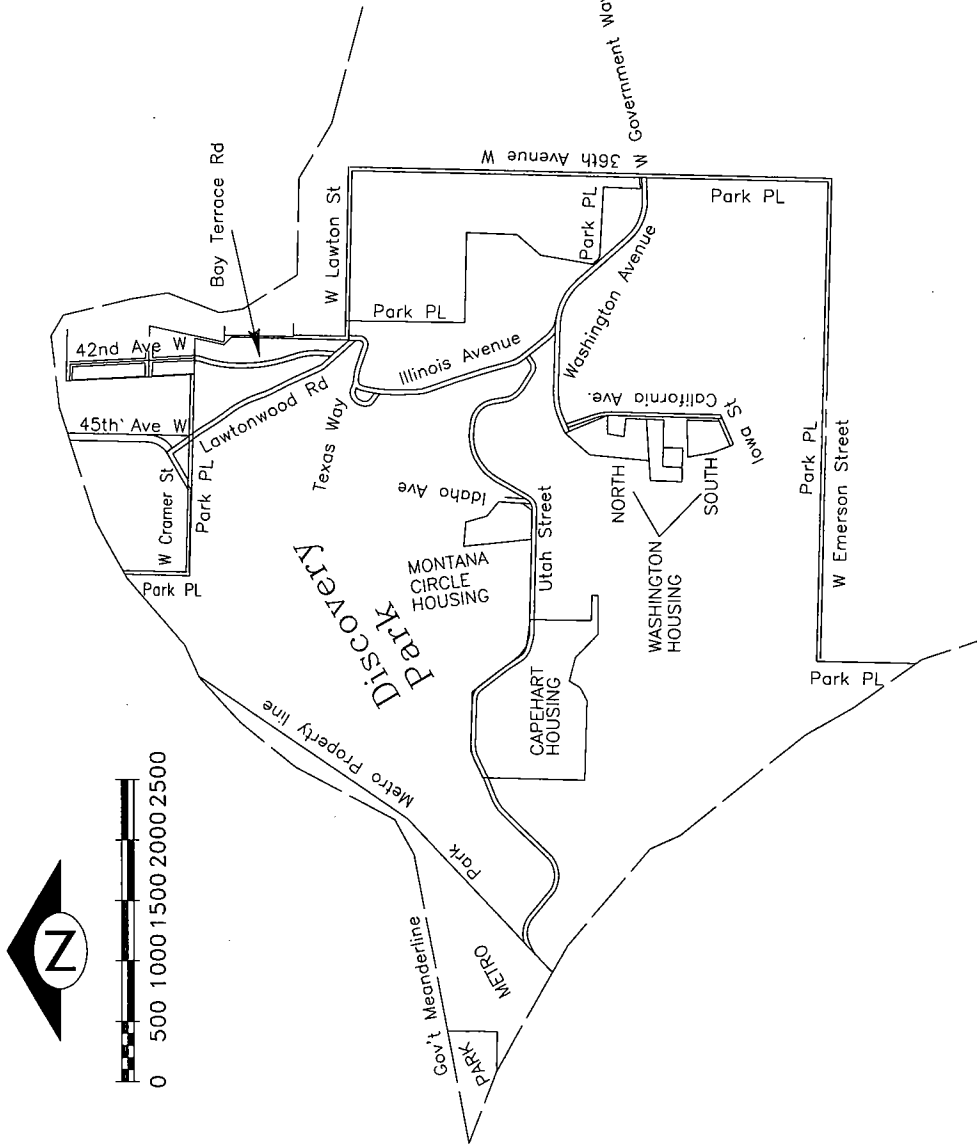
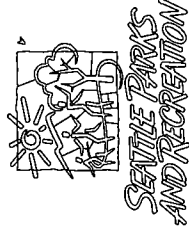
1. Washington Avenue
2. California Avenue
3. Iowa Street
4. Illinois Avenue
5. Utah Street
6. Idaho Avenue
7. Texas Way
8. Lawtonwood Road
9. 45th Avenue W
10. Bay Terrace Road

All other named roadways and placenames listed for locational reference  
 Park PL = Park Property Line

**NOTE # 2**

- Original Large Format 60 scale and 80 scale exhibit maps
1. Washington & California Avenues and Iowa Street Exhibit Sheet 1 of 6.
  2. Illinois Avenue & Texas Way Exhibit Sheet 2 of 6.
  3. Idaho Avenue and Utah Street Exhibit (1of2) Sheet 3 of 6.
  4. Utah Street Exhibit (2of2) Sheet 4 of 6.
  5. Lawtonwood Road & Bay Terrace Road Exhibit Sheet 5 of 6.
  6. 45th Avenue West Exhibit Sheet 6 of 6.

These exhibits are maintained in the Discovery Park files of  
 Park Engineer  
 Seattle Parks and Recreation  
 3rd Floor RDA Building  
 800 Maynard Avenue South  
 Seattle, WA 98134



Discovery Park Boulevards Schematic Index Map	DRAWN	DATE
	JAS/06	6/13/07
SCALE 1" = 1000'		

EXHIBIT I

Utilities Scope of Work

**Conceptual Sanitary Sewer and Water Facility Improvements  
American Eagle Properties  
Discovery Park, Seattle, WA**

**06/02/07 revised 6/14/07, 6/20/07, and 6/22/07**

**Basis of Conceptual Design and Cost Analyses**

Review of historical and record drawings provided by American Eagle Properties (AE) and Seattle Department of Parks and Recreation (SDP)

7 CDs provided by Seattle Department of Parks and Recreation (>100 drawings)  
ALTA Survey by David Evans and Associates (01/17/05) provided by AE

Limited Interviews with SDP Staff

Terry Dunning, Parks Real Estate Manager and Mark Orth, PE, Parks Engineer  
Seattle Department of Parks and Recreation  
800 Maynard Avenue South, Suite 402  
Seattle, WA 98134-1336  
206-684-4860

Interview and Site Reconnaissance conducted with PCS Concrete Services

Dirk Bennyhoff, Kris Willard and Joel Vasey  
26220 79<sup>th</sup> Avenue S.  
Kent, WA 98032  
253-856-2572

Interview with Lakevue Construction, Inc.

H. Robert Kaiser, Jr., President  
2654 – 170<sup>th</sup> SE  
Bellevue, WA 98008  
425-747-1384

Interview with MidMountain Contractors, Inc.

Gary Newman, Estimator  
Mid Mountain Contractors, Inc.  
825 5<sup>th</sup> Avenue  
Kirkland, WA 98033  
425-202-3600

Meeting at City of Seattle (6/14/07)

Ray Hoffman, Director, Corporate Policy & Performance, City of Seattle  
Beth Clark, Attorney, Foster Pepper  
Judy Nevins, Attorney, City of Seattle  
Frank McDonald, Manager, Asset Manager Business Area, City of Seattle  
Eugene Mantchev, SPU Water  
Barbara Staake, Sr. Project Engineer, Triad Associates  
Mark Keller, Principal, Triad Associates

## Sites Evaluated and Assumptions Used in Preliminary Assessment

### Montana Circle:

Sanitary Sewer – The condition of the existing 6” and 18” gravity sewer mains serving Montana Circle via gravity flow to the north will be evaluated via CCTV inspection and NASSCO PACP Standards. Based on the results of the inspection, they will either be replaced or rehabilitated utilizing point repair and manhole to manhole relining methods. All of the manholes will be replaced with City of Seattle standard manholes. Pipe re-lining will be either CIPP or RibLock. The manhole connecting to the King County Interceptor sewer line will not be replaced. Only sewer lines serving the historic housing that are taken out of service as a result of this work will be abandoned. Sewer main abandonment will consist of plugging the pipes at the manholes and backfilling the manholes. Abandoned sewer lines will not be pumped with inert material

Water – A new 12” SPU main will be connected to the existing 12” SPU main in Utah Avenue and extended in an easement in Montana Circle. The units will be condominiums and a new domestic meter will be installed to serve the HOA units. New fire hydrant(s) will be installed at 400’ minimum spacing. Abandoned water mains will be cut and capped.

### Washington Ave. (N) and (S)

Sanitary Sewer – A new 8” gravity sewer main would be constructed in California Ave. to convey sewage to the north, connecting with the proposed Montana Circle sewer system. Only sewer lines serving the historic housing that are taken out of service as a result of this work will be abandoned. Sewer main abandonment will consist of plugging the pipes at the manholes and backfilling the manholes. Abandoned sewer lines will not be pumped with inert material.

Water – A new 12” ductile iron SPU water main will be extended from the intersection of W. Emerson St. and Magnolia Blvd W, north to the approximate north boundary of the Washington Ave N parcel. New fire hydrants will be installed at 400’ minimum spacing. The FAA facility and Chapel will be reconnected to the new water main. New meters will be provided for the FAA facility and the Chapel. The water main will be routed around the FAA facility generally as depicted in the Conceptual Water Improvements exhibit dated 6/22/07. The exact route around the FAA facility will be determined through further field investigation.

The historic housing units will become condominiums and domestic meters will be provided for the north and south Washington Ave. parcels to serve the HOA units. The water main will be constructed per the City of Seattle standards.

Connections to Parks Dept. water mains will be cut and capped at the boundaries of the PNC parcels.

### General

- Mutually beneficial utility easements will be granted between all parties as necessary.
- All manholes in this new or rehabilitated sewer system (except for the deep manhole directly over the King County sewer interceptor) shall be replaced with City of Seattle Standard Type 200 manholes.
- Rehabilitation will consist of point pipe replacement or pipe relining or a combination of both.
- Existing pipe to be rehabilitated shall be cleaned and inspected in conformance with NASSCO PACP Standards. Submit a copy of the PACP inspection report (including video images) to SPU.
- Point rehabilitation of existing pipe shall be vitrified clay with shielded couplings (PVC pipe with shielded couplings is allowed if the replaced pipe section is <10 feet in length). Point pipe replacement is required if the pipe has an open fracture, offset joint of 1 inch or greater, a pipe sag of 1 inch or greater, or pipe out of round to an extent that relining is not possible.
- All pipe relining will be from manhole to manhole - point relining in shorter lengths between manholes is not allowed.
- Pipe relining is required when the existing pipe contains cracks of 0.10 inch in width or greater, root growth is present, when open pipe joints are visible or suspected, an offset joint of less than 1 inch is visible, or the pipe wall has eroded greater than 0.125 inch.
- Pipe relining shall be a cured in place pipe (CIPP) or RibLock™ system. When designing a CIPP liner, assume full pipe deterioration.
- New or replaced side sewers shall conform to the City of Seattle Side Sewer Code.
- Manholes on new pipe shall be no greater than 500 feet apart - preferred distance is 300 feet apart. A manhole shall be installed at all points at which the pipe changes direction (horizontally and vertically).
- Sewer pipe easements will be 16 feet in width. Access easements will be required to utilize existing roadways within the American Eagle sites to access the sewer easement.
- New and rehabilitated sewer construction shall conform to City of Seattle Standards.
- All new pipe shall be vitrified clay.
- The property owner/contractor shall provide SPU with a final inspection report that is signed and stamped by a WA State PE verifying that installation has been to City standards. The City shall have a right to observe installation but will not perform the inspection.



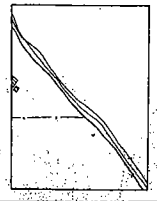
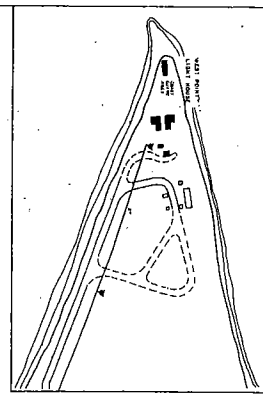
EXHIBIT I-1

Utilities Scope of Work – Conceptual Water Diagram  
(See 1-page diagram following)

# CONCEPTUAL WATER IMPROVEMENTS

REN. OF 06-22-07

- LEGEND:
- CUT & CAP EX MAIN (C)
  - EX SPU MAIN
  - NEW SPU MAIN
  - EX PRIVATE MAIN (HOA)
  - NEW PRIVATE MAIN (HOA)



**IMPORTANT**  
 THIS PRINT IS REDUCED  
 ITS SCALE IS NOT VALID

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THIS BAR WAS 4" BEFORE REDUCTION

233  
 18  
 02  
 15

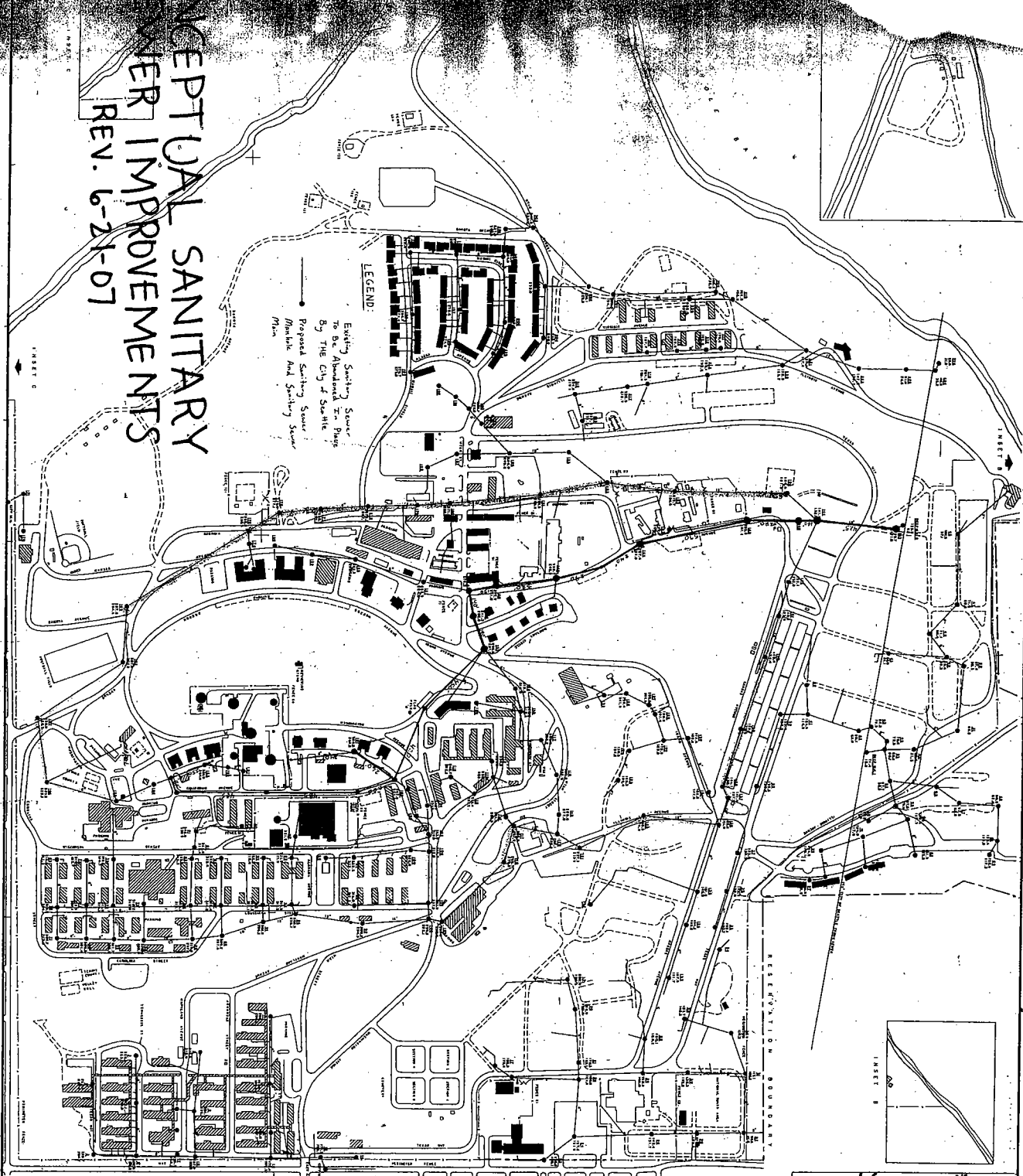
11011

EXHIBIT I-2

Utilities Scope of Work – Conceptual Sewer Diagram  
(See 1-page diagram following)

235  
19  
02  
15

# CEPTUAL SANITARY WER IMPROVEMENTS REV. 6-21-07



(EXHIBIT "E")

**FORT LAWTON**  
 FORT LAWTON, WASHINGTON

LEASING ENGINEER DISTRICT, SEATTLE  
 OFFICE OF THE PORT ENGINEER  
 FORT LAWTON, WASHINGTON

MASTERS PLAN  
 BASIC INFORMATION MAPS  
**GENERAL SANITARY-SEWER MAP**

DATE: JUNE 1963  
 SHEET: 74  
 SCALE: 1" = 100'

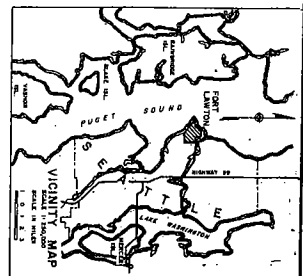
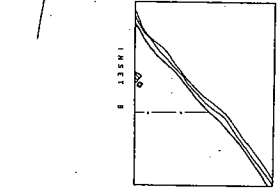


**IMPORTANT**  
 THIS PRINT IS REDUCED  
 ITS SCALE IS NOT VALID

THIS BAR WAS 4" BEFORE REDUCTION

**LEGEND**

EXISTING SANITARY SEWER  
 TO BE ABANDONED TO BE PIPED BY THE CITY OF SEATTLE  
 PROPOSED SANITARY SEWER  
 MANKIE AND SANITARY SEWER MAIN



11009

EXHIBIT J

Utility Contract

(To be inserted per Section 6.1(d))

EXHIBIT K

Form of FIRPTA

**CERTIFICATE OF NON-FOREIGN STATUS**

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by the undersigned Seller, the undersigned hereby certify the following:

1. Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those items are defined in the Internal Revenue Code and Income Tax Regulations);
2. Seller's Taxpayer Identification Number is: \_\_\_\_\_

The undersigned understand that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, the undersigned declare that we have examined this certification and to the best of our knowledge and belief it is true, correct and complete.

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

SELLER: \_\_\_\_\_

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