



October 22, 2012

Mr. Ben Noble
Central Staff Director
City of Seattle
600 Fourth Avenue
Seattle, WA 98104

RE: Consultant's report pursuant to Agreement No. DC2012-0011

This report reviews the contemplated real property transaction for the sale of the Pine Street Garage. This report reflects the consultant's opinion of the transaction when comparing it to other investment property sales in this market and other comparable markets on the west coast.

Overall, the business terms of this transaction appear to be congruent with similar types of real property transfers found in the market. A query of consultant's national database did not return any historical transactions with directly comparable data points, namely the combination of the type of real property interest, the nature of the seller and the subterranean nature of the asset. There are several examples of private transactions with similar income-producing real property which serve as the basis for this opinion on the nature of the contemplated transaction between the City of Seattle (hereinafter "City") and Pine Street Group (hereinafter "Purchaser") pursuant to a draft purchase and sale agreement between the City and Purchaser (hereinafter the "PSA").

The non-economic terms of the PSA are generally in line with expectations for the transfer of an income-producing real estate investment whose nature is a parking garage. Some of the unique aspects of the transaction include the condominium interest being conveyed; the subterranean nature of the parking garage; the nature of the seller as a public government entity, and, most importantly, the restrictions and agreements encumbering the operation of the asset. On balance, the PSA contemplates most of the business terms and conditions we see every day in the private real estate investment sales world.

With respect to economic terms, the restrictions and agreements encumbering the garage have a direct bearing on the value of the asset. There exists in all investment property an inverse relationship between restrictions and value where the greater the restrictions on the asset the lower the value and conversely, the fewer the higher the value. In this

particular instance, the restrictions on operation are those found in the parking agreement and umbrella agreement entered in to in 1996 for the creation of the garage and the retail above.

The appraisal of the property takes in to account the effect of these restrictions on value. In the narrative of the valuation assessment, the appraiser correctly adjusts the value downward as a result of the restrictions. Arguably, the 10% discount to value used by the appraiser is less conservative than a real estate investment sales specialist would expect from the investor community. In those cases, the expected discount to value for these restrictions would reach more in to the 20%-25% range, as the ownership of investment real estate is in itself entrepreneurial in nature. Investors in real estate frequently justify higher values by building in better management or operational plans to wring more cash flow from the assets. In circumstances where the operation is dictated by restriction or agreement, investors tend to discount the value more heavily, as there are no opportunities for them to adopt methods and plans which have proven to increase cash flow in their portfolio - the better mouse trap effect.

In the consultant's opinion, these restrictions would dampen the perception of value for an unrelated third party investor. The contemplated purchaser in this PSA stands out as the most logical candidate to recognize the most value in the asset as it can become an integrated feature of their business operation. In my opinion the contemplated price in this PSA is 10-15% more than would be expected for an unrelated third party investor to pay for the property in light of the conditions described previously in this report.

In the case of this asset, the nature of the seller as a public entity must also be factored in. While these restrictions have a negative impact on value, they were engineered to have a wider positive impact on property values in general and more significantly, positive economic impacts to the community as a whole through the increase in jobs and tax revenue. Any discount in value to the asset from restrictions on operation and use therefore appear insignificant when taken in totality with the positive public impact.

Comparison of certain specific areas of the Contemplated Purchase and Sale Agreement to typical market transactions witnessed by consultant are as follows.

To begin, the PSA has presumably been prepared by legal counsel. Comments provided by the consultant are not provided as legal advice nor does the consultant make any representations about their legal sufficiency. Consultant strongly urges all parties to seek legal advice as to the adequacy or appropriateness of any change to any contracts or agreements being contemplated in the transfer of this asset. Consultant commented on

only those sections of the PSA consultant felt were worth commenting. Sections not addressed were due to the section not containing any business points or consultant had no comparison to draw.

Section 1 – Purchase and Sale of the Property: This section identifies the real estate being transferred. This section contemplates the transfer from Seller to Purchaser of the Air Space Easement contained in the Umbrella Agreement signed on March 28, 1996. Section 8.B of the Umbrella Agreement describes an Air Space Easement, which restricts the bulk (volume) of the Systems Block Retail Unit under certain terms. City should seek a legal review of those terms to identify any separate and accretive value should additional development potential be inherent in this easement. If the inclusion of the easement allows for the Purchaser to achieve greater development potential on the site, there is significant value being transferred by way of the Air Space Easement being included in the sale. Accordingly, the PSA should be amended to reflect such value. If City’s legal counsel concludes Purchaser will continue to be bound by the easement such that there is no development potential being gained by Purchaser and inclusion is mechanically appropriate, no value would seem to be associated with the transfer of the easement, and no amendment would seem necessary.

Section 2 – Conveyance: Conveyance of the property by bargain and sale deed is a preferred method of conveyance by sellers. This form typically does not provide the warranties other conveyance types do. For this PSA, this type of conveyance is more likely associated with the fact the seller is a public entity but in any event it is a preferable means of conveyance for the City. This section also provides for the conveyance to be subject to all of the existing restrictions, easement, agreements and other matters affecting the property, which would intimate the Purchaser should be bound to maintain the same public benefits and protections which currently run with the property. Said restrictions and other matters have an impact on value as described below.

Section 3 – Purchase Price: The PSA does not specify how the purchase price is to be paid. Typically sellers would prefer all cash purchases and would specify so in the purchase agreement. The earnest money deposit is contemplated as cash rather than a promissory note which is beneficial to the City, especially in a case where the Purchaser defaults and the City exercises its remedies provided for in Section 11.1(ii) of the PSA. The amount of the earnest money is within the range of values seen in other transactions of similar scope and seems appropriate for this PSA.

Section 4 – Purchaser’s Title Contingency and Feasibility Period: The title policy being specified by Purchaser is appropriate for the type and nature of transaction. Purchasers in

general typically request extended coverage so as to include insurance for boundary disputes. A condominium endorsement is appropriate also given the nature of the interest being conveyed. The notice period of twenty days for review of exceptions to said policy is typical. However, most purchase agreements contemplate purchaser's acceptance of all exceptions should no notice be given within the time period. This PSA is unusual in that it contemplates Purchaser is deemed to agree to remove all of the exceptions objected to by Purchaser if no notice is provided within the twenty days. Unusual in the sense Purchaser has not been conveyed an interest in the property so they lack standing or authority to take necessary actions to remove exceptions and such actions prior to closing may not be in the best interests of Seller. This could be an area of conflict should there be exceptions to the policy present. We recommend this be changed so that City be responsible and remain in control of the actions which may or may not be taken to remove the exceptions objected to by Purchaser.

The cost of title policy if the transaction occurs as contemplated is not clear. Typically in private transactions the seller is responsible for the premiums associated with standard coverage title insurance. The purchaser pays for any increase in the premium associated with electing extended coverage insurance and other endorsements. The PSA only contemplates the purchaser will pay all fees associated with the title policy if the sale is not completed. To protect the seller from unanticipated or excessive expenditure, the PSA should apportion the costs of providing title insurance in the event the property sale is completed.

The review period of thirty days for Purchaser's feasibility period is at the low end for feasibility periods for this type of transaction, a benefit to the City. Usually feasibility periods for assets of this magnitude are thirty to ninety days in length. The notice provision in the feasibility section is opposite the custom in the private sector. Typically we see notice required to waive the contingency, and, if no such notice is provided, the PSA would be automatically terminated. This PSA contemplates the opposite, which can give rise to confusion and appears to conflict with section 7 of the PSA.

Section 5 – Representations and Warranties: This area usually creates the most discussion between sellers and purchasers in our experience. The purchasers naturally seek to secure the most comprehensive representations and warranties from the seller as protection for the purchaser. Sellers typically seek to minimize their exposure by limiting the representations and warranties given. This PSA strikes a reasonable balance between the two, though it is somewhat more favorable to the seller in this instance as some representations and warranties we expected to see provided were not present. It would seem the exposure to the public is minimal so long as the seller is able to make only these

representations and warranties. It further provides for representations and warranties by purchaser, which is important protection for the seller given the nature of the agreements and restrictions which encumber the property.

Section 6 – Conditions to Closing: Seller's condition to close has the important legislative caveat needed for sale of public property. It also contemplates execution of a Parking Operations Agreement and Parking Agreements and Covenants Assignment. These documents were not reviewed by the consultant. It is assumed these seller's conditions for closing would be properly constructed so that the purchaser of the property would be appropriately bound to operate as contemplated for the public benefit under the parking agreement and umbrella agreement executed in 1996.

Purchaser's obligations to close refers to deferred maintenance items being complete or, if incomplete, a purchase price reduction occurs. The PSA has an Exhibit H titled Deferred Maintenance Items with no entries. It would be imperative to specifically list the items and what qualifies as complete on the exhibit and reference it in the purchaser's conditions to closing so as to mitigate the risk of any purchase price reductions, especially as the PSA does not contemplate a pro ration of the deduction for any partially completed list.

Section 9 – Closing: Closing is set as a specific calendar date. In some instances of public property sales we have seen the closing date be identified as a specific number of days following appropriate legislative action by the public body. Obviously there should be sufficient time following the expiration of the Purchaser's feasibility period before closing so that the legislation may be perfected and passed by the council so that the council has sufficient time to act, and so that the purchaser has predictability for coordinating equity and debt provisions.

Section 10 – Escrow Agent's Obligations: The escrow instructions include a pro ration provision which we typically see in all transactions. The costs of the escrow service are also typical in that they are shared by the parties.

Section 11 Default: The default provision limits the seller to the retention of the earnest money deposit as its sole recourse for an unlawful default by purchaser. This has become the norm in private transactions and is typically the structure found in other sales.

Section 12 – Risk of Loss: The risk of loss prior to closing is borne by the seller. The provisions for this risk seem simplified and direct. While most other sales transactions we



have seen match this theme of risk of loss the treatment of details covers a wide spectrum such that there are trends but not necessarily norms when it comes to these conditions.

Section 15 – Assignment; Binding Effect: The PSA contemplates that the purchaser may assign the agreement without seller’s consent to any entity in which purchaser has an ownership interest, or any entity related to a party that has an ownership interest in Pacific Place. While the former condition is usual, the latter condition is much more broad and further removed from the purchaser than what we typically see in other transactions. It would be more difficult with the latter condition for the seller to intervene in the event an assignment was perceived to be not in the public good or run counter to the spirit of the PSA.

Exhibit A – Legal Description: Almost without exception we see the legal descriptions included in the purchase agreement prior to the execution of the agreement by the parties. The inclusion of a valid legal description (which may be provided by a title company from the most recent transfer deed) prior to execution would negate any claim which might be made as to the document’s enforceability related to legal description. We aggressively counsel our clients to include a legal description prior to execution and not leave this to the title company to insert following execution of the PSA.

As of the date of this report, I, Bret M. Jordan, have a valid Washington State Managing Broker’s license, copy of which is hereby attached.

Very truly yours,

Colliers International

Bret M. Jordan
Managing Director