



KING COUNTY

Signature Report

May 1, 2007

Ordinance

Proposed No. 2007-0275.1

Sponsors Constantine and Gossett

1 AN ORDINANCE authorizing the executive to execute a
2 purchase and sale agreement and all necessary conveyance
3 documents to complete the sale of the county owned
4 property known as the North Half of the Former Kingdome
5 Parking Lot parcel, located in council district 8, to North
6 Lot Development, L.L.C., waiving the requirement of
7 K.C.C. 4.56.130 as related to such a purchase and sale, and
8 related matters.

9
10 BE IT ORDAINED BY THE COUNTY COUNCIL OF KING COUNTY:

11 **SECTION 1. Findings:**

12 A. King County owns a 3.85 acre, which is 167,513 square feet, parcel of land,
13 commonly known as the North Half of the Former Kingdome Parking Lot ("North Half
14 Lot"), in the city of Seattle, Washington, located adjacent to the King Street Center, the
15 King Street Station, the Weller Street Pedestrian Bridge, and a surface parking lot owned
16 by the Washington State Public Stadium Authority ("PSA") and operated by First and
17 Goal, Inc. ("FGI"). King County facilities management division is the custodian.

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18 B. The property was purchased by King County in 1971 from Burlington
19 Northern, Inc., for the purpose of the Kingdome stadium development.

20 C. On September 8, 1998, Ordinance 13262 was passed in which the King
21 County council determined that the North Half Lot would become surplus to the county's
22 needs upon transfer of use and control of the Kingdome parcel to the PSA. The King
23 County executive was authorized to execute a property transfer agreement to convey the
24 Kingdome parcel to the PSA.

25 D. On September 30, 1998, King County entered into an Agreement on Stadium
26 and Exhibition Center Property Contributions and Reservation of Possessory Rights with
27 the PSA, as authorized by King County Ordinance 13262. Under said agreement, the
28 county retained ownership of the North Half Lot, and the PSA relinquished all rights and
29 interests in the North Half Lot with certain conditions. Conditions included the PSA
30 having use of the North Half Lot for parking and event staging until it receives notice of
31 commencement of a mixed-use development on the North Half Lot.

32 E. As called for by that agreement, King County conveyed the Kingdome parcel
33 to the PSA by statutory warranty deed on March 15, 2000, and retained the North Half
34 Lot.

35 F. Under a special use agreement issued in 1998 by King County to the PSA and
36 later assigned to FGI, the North Half Lot is currently used for the purpose of stadium and
37 exhibition center parking and event staging at no charge until notice of commencement of
38 the North Half Lot development is provided.

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39 G. In accordance with K.C.C. 4.56.070 and in addition to the surplus declaration
40 in Ordinance 13262, the facilities management division has declared the property to be
41 surplus to the foreseeable needs of the county.

42 H. K.C.C. 4.56.070 states that if the property is not needed for the provision of
43 essential government services, the facilities management division shall then determine if
44 the parcel is suitable for affordable housing. Suitable for affordable housing means the
45 parcel is located within the Urban Growth Area, is zoned residential, and the housing
46 development is compatible with the neighborhood. The King County facilities
47 management division has determined that the property is suitable for affordable housing
48 as part of a multiuse development.

49 I. On July 14, 2005, King County facilities management division, real estate
50 services section advertised nationally, a request for qualifications ("RFQ") for the sale of
51 the North Half Lot parcel, with responses due on August 30, 2005.

52 J. Four responses to the RFQ were received on August 30, 2005: Triad
53 Development Corporation; City Investors L.L.C.; the joint venture of Wright Runstad &
54 Company and The Murray Franklyn Family; and the joint venture of Opus Northwest,
55 L.L.C and Nitze-Stagen & Company, Inc. in cooperation with the Seattle Housing
56 Authority. All responders were determined to be qualified by a review panel that
57 included representatives from the county, the city of Seattle, the PSA and the state of
58 Washington.

59 K. On April 11, 2006, King County facilities management division, real estate
60 services section advertised and issued a request for proposals ("RFP") to the four
61 submitters who responded to the RFQ, providing them an opportunity to purchase the

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62 parcel for a fair market price equal to or exceeding \$10,110,000.00, if the development
63 would provide quality mixed-uses containing no fewer than four hundred market rate and
64 affordable housing units - of which one hundred units were required to be affordable -
65 and community-friendly retail and commercial uses.

66 L. The \$10,110,000.00 minimum purchase price was determined by appraisal and
67 included adjustments for the RFP requirements that the developer provide affordable
68 housing units and replace the existing PSA parking, as well as the impact of easements
69 encumbering the North Half Lot, including: the existing PSA easement connecting
70 Second Avenue South to the PSA property; a county sewer line and access easement to
71 support the new, below-grade Interbay odor control facility; easements conveyed to
72 Sound Transit for Weller Street Pedestrian Bridge access; and an easement retained by
73 the county to support metro transit bus service.

74 M. The RFP required that the development be compatible and integrate well with
75 existing and planned land uses in the surrounding area, be community friendly and
76 continue to stimulate and expand the economic base of the south downtown
77 neighborhoods.

78 N. The RFP also required that the development and its construction be
79 compatible with and accommodate the continuing operations of Qwest Field and the
80 Exhibition Center, and to ensure that construction activities be coordinated with all
81 adjacent property owners.

82 O. The RFP also required that the development replace existing parking spaces
83 used by the PSA on the site, both during construction of the development and following
84 completion, and also required that the PSA be permanently entitled to the revenue stream

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85 from the replacement parking. In addition, the RFP required the development to include
86 sufficient pay-for-parking to support King Street Station's needs for seventy parking
87 spaces.

88 P. The RFP also required that the development retain a view corridor to and from
89 Qwest Field along the PSA's existing easement to Second Avenue South. Bonus points
90 were possible if the proposal included a full service food market, which is a retail service
91 of particular interest to the Pioneer Square Community Association. Proposals were due
92 on June 28, 2006.

93 Q. Before the RFP deadline for submittal, Triad Development Corporation and
94 City Investors L.L.C. withdrew from the RFP, citing a lack of capacity within the
95 organizations to absorb a development of the scale of the North Half Lot in addition to
96 their other projects.

97 R. A selection committee met twice in June 2006 to review the two proposals
98 received. The selection committee consisted of representatives from the county
99 executive, the county council, the city of Seattle and the Pioneer Square Community
100 Association. One proposer, the joint venture of Wright Runstad & Company and The
101 Murray Franklyn Family of Companies, acknowledged it could not meet the minimum
102 RFP housing requirements, but requested to be maintained as a qualified party should the
103 requirements be modified.

104 S. At its second meeting, the selection committee selected the proposal from the
105 joint venture of Opus Northwest, L.L.C., and Nitze-Stagen and Company, Inc., in
106 cooperation with the Seattle Housing Authority ("ONS") as satisfying the requirements of
107 the RFP and addenda thereto and providing the best value to King County. The facilities

108 management division subsequently notified the joint venture of its acceptance of the
109 proposal.

110 T. Subsequent to the selection, the facilities management division commenced
111 negotiations with ONS, which has resulted in a proposed Purchase and Sale Agreement
112 ("the agreement") that incorporates the RFP's minimum requirements and provides
113 protections in the form of contingencies and covenants running with the land to ensure
114 that both before and following the closing of the sale, the development continues to
115 comply with the RFP and the terms of the agreement.

116 U. The agreement establishes a minimum total housing requirement of four
117 hundred units, and provides housing for multiple income levels and family sizes through
118 a mix of ownership and rental units. The agreement requires a minimum of one hundred
119 units of affordable housing, and, if determined to be economically feasible by ONS,
120 Workforce housing. All housing will meet LEED or Built Green certification.

121 V. The agreement requires ground level retail, row houses and shops, and, if
122 determined by the buyer to be economically feasible, the provision of a full service food
123 market. All retail and commercial uses will meet LEED certification.

124 W. The agreement requires that the developer provide the PSA four hundred
125 ninety-one spaces of replacement parking and seventy spaces to support the King Street
126 Station.

127 X. The agreement requires that the developer provide the PSA and FGI early
128 review and comment on the development plans for the North Half Lot, prepare a traffic,
129 circulation and staging study and use the information developed in the study in planning
130 the site layout, design and circulation elements of the project.

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131 Y. In order to ensure that the development complies with the above requirements,
132 the county has inserted contingencies that must be satisfied before closing. The
133 contingencies include ONS obtaining a master use permit for the development, and the
134 King County executive determining that conveyance is appropriate with or without
135 additional or revised conditions consistent with and based on state Environmental Policy
136 Act review, which review will be performed by the city of Seattle as the lead agency in
137 conjunction with review of the development permit applications for the development.

138 Z. The development is consistent with and helps implement the King County
139 Comprehensive Plan, Countywide Planning Policies and the Growth Management Act,
140 all of which call for concentrated infill development in Urban Areas, which makes
141 efficient use of existing and new public facilities and services.

142 AA. The development will help meet the growing need for housing in King
143 County, and will provide the opportunity for the county and the city to obtain affordable
144 housing within a major employment center.

145 BB. The development will help implement the city of Seattle's goals of
146 stimulating housing and related development in Pioneer Square.

147 CC. The development described in the Agreement is supported by the Pioneer
148 Square Community Association.

149 DD. The sale and development of the North Half Lot is consistent with RCW
150 36.102.100(2) because it is not necessary for the site for the stadium and exhibition center
151 as defined in RCW 36.102.010, authorized by chapter 36.102 RCW, the Stadium Act,
152 and now owned and operated by the PSA.

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153 EE. The sale of the property is authorized under K.C.C. 4.56.100.A.7, because it
154 is being sold through a request for proposals for on-site development of affordable
155 housing that provides a public benefit. The sale of the property is also authorized under
156 K.C.C. 4.56.100.A.1, because unique circumstances make a direct sale to ONS in the best
157 interests of the public. Unique circumstances exist because ONS has demonstrated its
158 singular ability to develop the North Half Lot consistent with the RFP and in a manner
159 that harmonizes with the needs of the stakeholders for the North Half Lot and the
160 adjacent stadiums, exhibition center and neighborhoods.

161 SECTION 2. The King County executive is hereby authorized to convey the
162 North Half of the Former Kingdome Parking Lot to North Lot Development, L.L.C.,
163 consistent with a purchase and sale agreement substantially in the form of Attachment A
164 to this ordinance, and to implement the terms of the purchase and sale agreement and
165 execute any documents necessary to carry out such conveyance.

166 SECTION 3. The provisions of K.C.C. 4.56.130 requiring ten percent of the
167 gross sale proceeds to be deposited into the arts and cultural development fund on
168 transactions with gross sale proceeds of two hundred fifty thousand dollars or greater that
169 are to accrue to the current expense fund are waived as related to this purchase and sale.
170 Net proceeds of the sale shall be deposited in the current expense subfund, for purposes

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171 of pursuing options for development, redevelopment or capital improvements either in or
172 around, or both in and around, the King County campus in downtown Seattle.
173

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

ATTEST:

APPROVED this ____ day of _____, ____.

Attachments A. Real Estate Purchase and Sale Agreement

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of _____, 2007, by and between **KING COUNTY**, a municipal corporation and political subdivision of the State of Washington (the "Seller") and **NORTH LOT DEVELOPMENT, L.L.C.**, a Delaware limited liability company (the "Buyer").

RECITALS

A. Seller owns that certain real property located in the City of Seattle, County of King, State of Washington, which consists of approximately 167,504 square feet, or 3.85 acres, the legal description of which is attached hereto as **EXHIBIT A** (the "Property").

B. Seller is desirous of selling the Property and Buyer is desirous of purchasing the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

**ARTICLE 1.
PURCHASE AND TRANSFER OF ASSETS**

1.1. PROPERTY TO BE SOLD. Subject to and upon the terms and conditions set forth in this Agreement, Seller shall sell, convey, assign, transfer and deliver to Buyer on the Closing Date (as hereinafter defined in Section 10.1 of this Agreement) and Buyer shall buy, assume and accept from Seller on the Closing Date the following assets and properties:

1.1.1. the Property;

1.1.2. all of the improvements and structures located on the Property, if any;

1.1.3. all of Seller's right, title and interest in and to tangible personal property, if any, owned by the Seller and attached, appurtenant to or used in connection with the Property ("Personal Property");

1.1.4. all of Seller's tenements, hereditaments, easements and rights appurtenant to the Property including but not limited to, all of the Seller's right, title, and interest in and to streets, alleys or other public ways adjacent to the Property, easements for public utilities, all

sewers and service drainage easements, all rights of connection to the sewers, and all rights of ingress and egress, and all leases, licenses, government approvals and permits affecting the Property.

Hereinafter, the items listed in Section 1.1 are collectively referred to as the "Purchased Assets."

ARTICLE 2. PURCHASE PRICE

2.1. PURCHASE PRICE AND PAYMENT. In consideration of the sale, transfer, conveyance, assignment and delivery of the Purchased Assets, Buyer shall, in full payment therefore, pay to Seller on the Closing Date a total purchase price of **Ten Million One Hundred and Ten Thousand Dollars and Zero Cents (\$10,110,000.00)** (the "Purchase Price").

2.2. ALLOCATION OF PURCHASE PRICE. Seller and Buyer agree that the entire Purchase Price is allocable to real property and that the value of the Seller's Personal Property, if any, is *de minimus*.

2.3. EARNEST MONEY. Not later than five (5) days following the Date of this Agreement, Buyer shall deposit with Escrow Agent (defined in Section 10.2 below) a promissory note ("Note") in the sum of Five Hundred Thousand Dollars (\$500,000.00) as the initial earnest money deposit (the "Earnest Money") in the form attached hereto as **EXHIBIT B**. The Earnest Money Note shall be replaced with cash within three (3) business days after the end of the Due Diligence Period or upon notification by Buyer that Buyer has removed Buyer's Contingencies. The Earnest Money, once converted to cash, will be deposited into an interest bearing escrow account by the Escrow Agent at a financial institution approved by Buyer, and all interest accruing thereon shall become a part of the Earnest Money. Except as provided in Section 4.1.5, Earnest Money shall become non-refundable after all Contingencies hereinafter described are satisfied or waived by the parties during the Due Diligence Period (as the same may be extended). Upon closing of this transaction, the Earnest Money shall be credited against the Purchase Price.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

3.1. WARRANTIES AND REPRESENTATIONS OF SELLER. Seller represents and warrants as follows:

3.1.1. Definition of Seller. The Seller is a municipal corporation and subdivision of the State of Washington duly organized, validly existing and in good standing under the laws of the State of Washington. Seller has all requisite corporate power and authority to carry on its business as it is now being conducted in the place where such businesses are now

conducted.

3.1.2. Execution, Delivery and Performance of Agreement, Authority. The execution, delivery and performance of this Agreement by Seller (i) is within the powers of Seller as a municipal corporation, (ii) has been or will be on or before the Closing Date, duly authorized by all necessary action of the Seller's legislative authority, and (iii) does not and will not violate any provision of any law, rule, regulation, order, writ, judgment, decree, agreement or award to which the Seller is a party to or which is presently in effect and applicable to Seller. This Agreement constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with the terms thereof.

3.1.3. Assessments. There is no pending, or to the best of Seller's knowledge, contemplated local improvement district or other special assessment or charge with respect to the Property, except as may be disclosed in the Title Commitment described in Section 4.1 of this Agreement.

3.1.4. Full Disclosure. No representation or warranty by Seller in this Agreement or in any instrument, certificate or statement furnished to Buyer pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or fail to state a material fact which is necessary to make the statements set forth therein not false or misleading.

3.1.5. No Broker. No broker, finder, agent or similar intermediary has acted for or on behalf of Seller in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent or similar intermediary is entitled to any broker's, finder's or similar fee or commission in connection with this Agreement based on an agreement, arrangement or understanding with Seller or any action taken by Seller.

3.1.6. Contracts. There are no contracts or other obligations outstanding for the sale, exchange, transfer, lease, rental or use of the Property or any portion thereof.

3.1.7. Future Agreements. From and after the date hereof, except as set forth herein or unless this Agreement is terminated in accordance with its terms, Seller shall not, without the prior written consent of Buyer, which shall not be unreasonably withheld, delayed or conditioned, enter into any agreement, contract, commitment, lease or other transaction that affects the Property in any way. Seller is authorized to enter into and execute the amendments to the legal descriptions for the Weller Street Bridge Pedestrian Easement, which was recorded under recording number 20061201000126 on 12/01/2006.

3.1.8. Claims. Except as disclosed in writing to Buyer, Seller has not received and Seller has no knowledge of any pending or threatened claims or lawsuits affecting or concerning the Property or that could adversely affect Seller's ability to complete the sale contemplated by this Agreement;

3.1.9. Violations of Law. Seller has received no written notice of, and it has no knowledge of, any violation of any applicable zoning regulation, ordinance or law (including environmental laws) affecting or relating to the use, condition, or occupancy of the Property.

3.1.10. Foreign Person. Seller is not a foreign person and is a "United States Person" as such term is defined in Section 7701 (a) (30) of the Internal Revenue Code of 1986, as amended (the "Code") and shall deliver to Buyer prior to the Closing Date, an affidavit, as set forth in **EXHIBIT C (Certificate of Non-Foreign Status)**, evidencing such fact, and such other documents as may be required under the Code.

3.1.11. Seller's Knowledge. Any and all representations or warranties based on Seller's knowledge are made to and limited by the present, actual knowledge of Bob Thompson, who is an employee King County, and is the Program Manager, Inventory and Sales of the Real Estate Service Section. Bob Thompson has made no inquiries or investigations with respect to Seller's representations and warranties prior to the making thereof and has no duty to undertake the same.

3.1.12. Stadium Agreements and Claim. Seller and Buyer acknowledge the existence of a series of agreements relating to the conveyance to the Washington State Public Stadium Authority ("PSA") by Seller of the land upon which the Qwest Field and Exhibition Center and associated facilities ("Stadium and Exhibition Center") are located, and the retention by Seller of the Property ("Stadium Agreements"), and the related potential claim of the PSA to the Property or against conveyance of the Property by Seller under RCW ch. 36.102 ("Stadium Claim"). The Stadium Agreements are the Agreement and Letter of Intent, dated June 25, 1998, the Agreement on Stadium and Exhibition Center Property Contributions and Reservations of Possessory rights dated September 30, 1998, the Special Use Agreement dated December 11, 1998, the General Assignment of the Special Use Agreement dated April 16, 1999, the First Amendment to Special Use Agreement and Assignment of First Amendment dated January 26, 2000, the Option Agreement for the North Half of the North Lot fully executed as of March 16, 2000, the Memorandum of Option for the North Half of the North Lot dated May 19, 2000, the Statutory Warranty Deed granted by King County to the Washington State Public Stadium Authority dated March 15, 2000, and all documents specifically referenced within these agreements. All matters related to or arising from the Stadium Agreements and Stadium Claim are excluded from the coverage of the representations and warranties of Seller in Sections 3.1.1 through 3.1.11.

3.2. REPRESENTATIONS AND WARRANTIES OF BUYER. Buyer represents and warrants as follows:

3.2.1. Organization. Buyer is a Delaware limited liability company, validly existing and qualified to do business in the State of Washington. The members of Buyer are Opus Northwest, L.L.C., a Delaware limited liability company, and Nitze-Stagen & Co., Inc., a Washington corporation. Buyer is currently, and will remain until the Project, as defined herein,

is completed, financially able to perform all obligations set forth in this Agreement. Buyer has all requisite entity power and authority to purchase the Property and perform its obligations hereunder.

3.2.2. Execution, Delivery and Performance of Agreement, Authority. The execution, delivery and performance of this Agreement by Buyer (i) is within the powers of Buyer as a Delaware limited liability company, (ii) has been or will be on or before the Closing Date, duly authorized by all necessary action of the Buyer's legislative authority, and (iii) does not and will not violate any provision of any law, rule, regulation, order, writ, judgment, decree or award to which the Buyer is a party to or which is presently in effect and applicable to Buyer. This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with the terms hereof.

3.2.3. Full Disclosure. No representation or warranty by Buyer in this Agreement or in any instrument, document, certificate or statement furnished to Seller pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or fail to state a material fact which is necessary to make the statements set forth therein not false or misleading.

3.2.4. No Broker. No broker, finder, agent or similar intermediary has acted for or on behalf of Buyer in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent, or similar intermediary is entitled to any broker's, finder's or similar fee or commission in connection with this Agreement based on an agreement, arrangement, or understanding with the Buyer or any action taken by the Buyer.

ARTICLE 4. TITLE MATTERS

4.1. TITLE. Seller shall deliver to Buyer good and marketable title, free and clear of all liens, defects and encumbrances except for the Reserved Easements (as described in Section 4.4 of this Agreement), Covenants (as described in Section 4.5 of this Agreement) and Permitted Exceptions (as described in Section 4.1.3 - 4.1.5 of this Agreement).

4.1.1. Title Commitment. Buyer shall obtain a current ALTA form of commitment for an owner's policy of title insurance (the "Title Commitment") issued by First American Title Insurance Company (the "Title Company"), describing the Property, listing Buyer as the prospective named insured and showing as the policy amount the total purchase price for the Property, and shall have a copy of such Title Commitment with legible copies of all documents listed therein delivered by the Title Company to Seller.

4.1.2. Survey. Buyer shall have the option, at its expense, to have prepared and furnished to the Title Company, Buyer and Seller a survey (the "Survey") of the Property

prepared by a licensed public surveyor.

4.1.3. Review of Title Commitment and Survey.

a. Buyer shall have until the later of (a) thirty (30) days after the date this Agreement is fully executed by the parties, and (b) fourteen (14) days after receipt of (i) the last dated Title Commitment with legible copies of all documents listed therein, and (ii) the Survey, if any has been obtained by Buyer (the "Review Period") in which to notify Seller of any objections Buyer has to any matters shown or referred to in the Title Commitment or Survey. Any exceptions or other items that are set forth in the Title Commitment or the Survey and to which Buyer does not object within the Review Period shall be deemed to be permitted exceptions ("Permitted Exceptions"). With regard to items to which Buyer does object within the Review Period, Seller shall notify Buyer within ten (10) days after Seller receives Buyer's notice of objections of any exceptions to the title or items on the Survey which Seller is not willing or able to remove or otherwise resolve, and Buyer may, at Buyer's option, either waive the objections not cured or Buyer may terminate this Agreement by written notice to Seller. Notwithstanding the foregoing, all monetary liens or encumbrances shall be paid by Seller at Closing.

b. Seller and Buyer specifically acknowledge that the existing easement in favor of Seattle City Light, which was recorded under recording number 19990811000621 on August 11, 1999, may create problems for the Project (as hereafter defined in Section 4.5.1), and that the Parties will cooperate in good faith to determine whether an adjustment to this easement may be obtained in order to better accommodate the Project.

4.1.4. Stadium Agreements and Stadium Claim. Notwithstanding the process set forth in Section 4.1.3, Buyer shall have the opportunity, until it removes Buyer's Contingencies under Section 5.1, to evaluate the Stadium Agreements and Stadium Claim referenced in Section 3.1.12 as part of Buyer's due diligence. Upon removal of Buyer's Contingencies, Buyer agrees that the Stadium Agreements and Stadium Claim shall be Permitted Exceptions. Further, upon removal of Buyer's Contingencies, Seller shall thereafter have no liability to Buyer for, and Buyer shall have no recourse against Seller and will waive any claims for, all matters related to or arising from the Stadium Agreements and Stadium Claim. Seller and Buyer agree that compliance with the terms of this Agreement will be deemed by Seller to satisfy the obligations of Seller and Buyer under the terms of the Stadium Agreements. Further, Seller has concluded that the Property is not necessary as part of a site for the stadium and exhibition center as that term is defined in RCW 36.102.010, and the County Council will make a determination to that effect in any Ordinance approving this Agreement.

4.1.5. Challenge to Conveyance If a lawsuit is filed at any time against Seller or Buyer or both Seller and Buyer challenging the conveyance contemplated by this Agreement on any grounds, then each named Party shall vigorously defend the ability of the Parties to carry out the terms of this Agreement and the Project contemplated herein and each Party shall

cooperate with the other in such defense. Seller shall not, however, be required to vigorously defend such a lawsuit to the extent the subject matter of the lawsuit arises from Buyer's failure to comply with the terms of this Agreement and the Deed (if conveyance has occurred), and Seller may seek any remedies available under this Agreement for such failure to comply. If a lawsuit as described in this Section 4.1.5 is filed and a Court enters an order, judgment, or injunction that permanently prohibits or voids the conveyance contemplated by this Agreement and any applicable appeal period has expired without an appeal being filed, then either Party may terminate this Agreement and neither party shall have any further rights or obligations to the other, except that Buyer shall be entitled to a refund of any money paid to Seller prior to such termination, except for any non-refundable extension payment under Section 5.3 of this Agreement for an extension that moved Closing beyond June 30, 2008. Provided, however, that if there is an appeal of such order, judgment, or injunction then each named Party shall continue to vigorously defend and cooperate in the manner required in this Section 4.1.5 prior to such appeal, and the decision to terminate this Agreement must be mutual. All deadlines hereunder shall be extended pending any such appeal and the parties agree to enter into good faith renegotiations of the terms of this Agreement based on the outcome of such appeal. If such lawsuit is filed and a Court temporarily enjoins the conveyance contemplated by this Agreement prior to Closing, then the deadlines for performance under this Agreement shall be extended for the same period of time as the temporary injunction. This Section shall apply notwithstanding the representations and warranties of the Parties in Article 3 of this Agreement, and the non-refundable nature of extension payments described in Section 5.3 of this Agreement. The provisions of this Section 4.1.5 shall also be a Permitted Exception.

4.2. OWNER'S TITLE INSURANCE POLICY. At the closing, Buyer shall receive an extended coverage owner's policy of title insurance to be issued by the Title Company in the full amount of the purchase price, effective as of the Closing Date, insuring Buyer that the fee simple title to the Property is vested in Buyer, subject only to the usual printed exceptions contained in such title insurance policy, to the Permitted Exceptions and such easements and covenants as are agreed to by the Parties as provided by Sections 4.4 and 4.5 of this Agreement and attached to the Deed, and to any other matters approved in writing by Buyer.

4.3. CONVEYANCE. Seller shall convey to Buyer the title to the Property by Statutory Warranty Deed ("Deed"), subject to the Permitted Exceptions and such easements and covenants as are agreed to by the Parties as provided by Sections 4.4 and 4.5 of this Agreement.

4.4. RESERVED EASEMENTS. Seller shall reserve the following easements in the Deed (as defined in Section 4.3 herein):

4.4.1. Transit Easements. Seller shall reserve Transit Easements for bus ingress, egress and through travel and for temporary bus stops on the Second and Third Avenue Extensions on the Property sufficient in scope to allow solely for occasional and short term use, such as that in conjunction with special event service associated with Qwest Field and the Exhibition Center, when use of other nearby streets is not reasonably

available or permitted. In preparing the Transit Easements as required by Section 5.4 of this Agreement, Buyer and Seller shall coordinate with one another to identify the appropriate locations and dimensions of the Transit Easements, which locations and dimensions shall be sufficient to allow the uses authorized by the Transit Easements.

4.4.2. Odor Control Facility Easements. Seller shall reserve an Odor Control Facility Access and Maintenance Easement that will allow access to the Stationmaster's Garden along the Third Avenue Extension and maintenance activities in the portion of the Third Avenue Extension near the Stationmaster's Garden. Seller shall also reserve an Odor Control Facility Utility easement for the installation, operation and maintenance of an underground utility connection within the Third Avenue Extension between King Street and the Stationmasters Garden, and between the Stationmasters Garden and the Weller Street Bridge in the location of the City Light easement in that area. If Closing occurs before December 31, 2007, Seller may also reserve a temporary construction easement over a portion of the Property that will terminate on December 31, 2007.

4.4.3. Fiber Optic Line Easement. Seller shall reserve a Fiber Optic Line Easement that will authorize the installation, operation, maintenance, repair and replacement of the existing underground Fiber Optic Line in the Third Avenue Extension in its current location or an alternative location to be agreed to by the Parties. In preparing the Fiber Optic Line Easement as required by Section 5.4 of this Agreement, Buyer and Seller shall coordinate with one another to identify the appropriate locations and dimensions of the Easement, which locations and dimensions shall be sufficient to allow the uses authorized by the Fiber Optic Line Easement.

4.5. COVENANTS. The Deed (as defined in Section 4.3 herein) shall include the following restrictive covenants, which covenants shall run with the land for the sole benefit of the County and the County's significant interests in land, both fee and easement adjacent to and in the vicinity of the Property. Seller and Buyer agree that the County and its successors in interest shall have standing to enforce these covenants. The covenants shall be enforced with the remedies set forth in Section 12.4 of this Agreement. Buyer and Seller further agree that these covenants may also be enforced by the Parties hereto as a matter of contract through this Agreement, and that these covenants shall be binding obligations on Buyer when this Agreement is fully executed.

Buyer and Seller further agree and declare that the covenants and conditions contained herein shall bind and the benefits shall inure to, respectively, the Buyer and its successors and assigns and all subsequent owners of any portion of the Property or the Project, and to Seller and its successors and assigns, subject to expiration, termination, and modification thereof as specifically provided below. Each and every contract, deed or other instrument hereafter executed conveying any portion or interest in the Property or the Project, including any interest under the Washington Condominium Act, Ch. 64.32 RCW, shall contain an express provision making such conveyance subject to any covenants and conditions of this Agreement which are

then still in effect, provided however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants and conditions, regardless of whether or not such covenants and conditions are set forth or incorporated by reference in such contract, deed or other instrument. It is declared and agreed in particular that if any condominium is created in any portion of the Property or Project, the Deed and the then applicable covenants shall be attached and incorporated as conditions to the declaration, master lease, or other document creating the condominiums, and to any condominium association by-laws.

Upon satisfaction of any covenant herein Seller shall execute and record a document to memorialize such satisfaction in a form proposed by Buyer and approved by Seller, which approval shall not be unreasonably conditioned, delayed or withheld.

4.5.1. Development Scope. Buyer shall covenant that the development (the "Project") of the Property shall consist of the design, construction, operation and maintenance of a mixed-use development with housing as specified herein, and community friendly, ground level retail, row houses and shops, and, if determined by the Buyer, in the exercise of its best business judgment, to be economically feasible, the provision of a full service food market. All commercial and retail spaces will be designed and constructed to meet LEED Certification. This covenant shall expire upon the completion of the construction of the Project in a manner consistent with the requirements of this Agreement, including without limitation, the development schedule requirements in Section 4.5.11 of this Agreement.

4.5.2. Housing. Buyer shall covenant that the development shall include at least 350,000 gross square feet of housing, not including parking, for multiple income levels and family sizes and include a minimum of 400 housing units, of which a minimum of 200 housing units shall be ownership units. Sixty percent of the development's gross square footage allowable under current zoning, height limits imposed by the Stadium View Corridor in Section 4.5.7 of this Agreement and any easements existing at the time this Agreement is entered into, not including parking, must be housing. If the gross square footage of the development is increased, because of a change in zoning to allow for an increase in the height of buildings within the development, and if Buyer concludes that it is inappropriate to extend the sixty percent housing requirement to the larger development, based on information gained about the site during Buyer's development feasibility analysis, Buyer may present this information to Seller and the City of Seattle and develop the property pursuant to an alternative development plan as to the percentage of the development that must be housing only, provided that such alternative development plan is approved by the King County Executive and the Mayor of the City of Seattle. All housing units in the development must meet either LEED Certification or Built Green Certification at the highest level determined to be economically feasible by Buyer, in the exercise of its best business judgment. This covenant shall expire upon the

completion of the construction of the Project in a manner consistent with the requirements of this Agreement, including without limitation, the development schedule requirements in Section 4.5.11 of this Agreement.

4.5.3. Affordable Housing. Buyer shall covenant that at least 100 of the housing units in the development must be affordable housing, as described below ("Affordable Housing," which includes "Affordable Ownership Units" and "Affordable Rental Units"). This requirement may be achieved through the provision of Affordable Ownership Units, Affordable Rental Units or a combination of both forms of Affordable Housing, to households meeting the following criteria for a period of at least twenty (20) years from initial occupancy of the units:

- a. If the development includes Affordable Ownership Units, the units must be sold to households earning no more than 100% of the annual median income for King County. Affordable Ownership Units must be occupied only as the household's sole primary residence.
- b. If the development includes Affordable Rental Units, the units must be available to households earning no more than 60% of the annual median income for King County.
- c. Median income amounts shall be defined by the HUD Income Guidelines for King County in effect at the time the units are rented or sold.
- d. All Affordable Housing units must have the same basic finish or features as those in non-luxury market rate units. Tenants or owners of Affordable Housing units must have the same access to all facilities and programs, other than parking, as non-luxury market rate tenants. Consistent with the Project's upgrade policy for non-luxury units, all initial purchasers of Affordable Ownership units shall be given the opportunity to upgrade their unit's finish at their expense.
- e. As a guide, Affordable Housing units should be at least: 500 useable square feet if studio, 700 useable square feet if 1 bedroom, 800 useable square feet if 2 bedroom/1 bathroom, 900 useable square feet if 2 bedroom/2 bathrooms, and 1,000 useable square feet if 3 bedrooms. The average size of Affordable Housing studio units should be 550 useable square feet.
- f. At least 35% of the Affordable Housing units shall consist of two or more bedrooms.

