

**FIRST AMENDMENT TO
REAL ESTATE PURCHASE AND SALE AGREEMENT**

This FIRST AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT (this "First Amendment" and together with the original PSA, the "Agreement") is entered into as of August 25, 2015 between the **City of Tacoma**, a first class municipal corporation ("Seller") and the **Housing Authority of the City of Tacoma**, a public body corporate and politic of the State of Washington that has been granted by Seller the authority to exercise the powers of a public development authority ("Buyer").

RECITALS

WHEREAS, Buyer and Seller entered into that certain REAL ESTATE PURCHASE AND SALE AGREEMENT dated October 16, 2013 (separately the "Original Agreement") regarding the purchase and development of those certain parcels of real property, together with all improvements thereon, located at the street addresses of 1120 (tax parcel no. 2011220040) and 1124 Martin Luther King Jr. Way (tax parcel no. 2011220050), as legally described in the Original Agreement (the "Property" as defined in the Original Agreement); and

WHEREAS, the Original Agreement contained a number of timing deadlines for the Buyer to meet on the way to Closing (defined at Section 8.1 of the Original Agreement) on the Property; and

WHEREAS, Buyer is in the process of attempting to assemble a larger area of real property in and around the Property in order to expand the scope of its Project (as defined in the fourth recital of the Original Agreement) and needs more time to do so; and

WHEREAS, Seller hereby agrees to give Buyer the additional time it has requested;

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Seller and Buyer hereby modify and amend the Agreement and otherwise agree as follows:

AGREEMENT

1. **Definitions.** All capitalized terms used herein shall have the same meanings as set forth in the Original Agreement.

2. **Modifications to Timing.** Seller and Buyer hereby modify the Original Agreement as follows:

2.1 Subsection 7.2.2 of the Original Agreement is hereby replaced with the following:

7.2.2 No later than May 31, 2017, Buyer must submit to Seller its final design, and construction cost estimates for Seller's reasonable approval;

2.2 Subsection 7.2.3 of the Original Agreement is hereby replaced with the following:

7.2.3 No later than April 30, 2018, Buyer must submit to Seller Buyer's written statement regarding its determination of financial feasibility for the Project to be completed on the Property; if Buyer is unable, in good faith, to submit its

assessment that the Project is feasible in all respects by this date, Seller may terminate this Agreement and have no further obligation to Buyer;

2.3 Subsection 7.2.4 of the Original Agreement is hereby replaced with the following:

7.2.4 No later than June 1, 2018, Buyer must submit to Seller all documentary evidence of Buyer's having obtained all construction and permanent financing reasonably necessary to complete the Project on the Property; if Buyer is unable in good faith to do so, Seller may terminate this Agreement without further obligation to Buyer.

The foregoing conditions are hereafter collectively referred to as the "Financing Feasibility Conditions." Buyer acknowledges that Seller's primary purpose in entering into this Agreement is to achieve redevelopment and productive use of the Property in a manner that benefits the community by providing affordable housing that is aesthetically compatible with the surrounding neighborhood. To that end, if Buyer is unable to prove to Seller's reasonable satisfaction that it has procured sufficient funds/financing to complete the Project no later than June 1, 2018, Seller may discretionarily terminate this Agreement and market the Property to other buyers.

2.4 Section 8.1 of the Original Agreement is hereby replaced with the following:

8.1 **Closing.** This transaction will be closed in escrow by the Title Company acting as escrow agent ("Escrow Agent"). The Closing will be held at the office of the Title Company on or before June 30, 2018 (the "Closing Date"). If Closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by Seller and Buyer, Escrow Agent will immediately terminate the escrow, return any monies to the party entitled to receive them and return all documents to the party that deposited them. When notified by Escrow Agent, Buyer and Seller will deposit with Escrow Agent without delay all instruments and moneys required to complete the transaction in accordance with this Agreement. "Closing," for the purpose of this Agreement, is defined as the date that all documents are executed and legal title passes to the Buyer.

2.5 Subsection 8.3.1 of the Original Agreement is hereby replaced with the following:

8.3.1 Buyer shall begin construction of the Project on the Property no later than forty-five (45) days after Closing on the purchase of the Property and shall complete construction of the Project no later than June 30, 2019;

3. **Modification to Exhibit C Covenants and Conditions.** Because the foregoing timeline changes affect provisions in the Covenants and Conditions referenced at Section 3 of the Original Agreement, Exhibit C of the Original Agreement is hereby replaced with Exhibit C attached to and made part of this First Amendment and the Agreement.

4. **Original Agreement Affirmed**. Except as modified herein, the Agreement remains in full force and effect.

Signature Page to FIRST AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT, City of Tacoma and Housing Authority of the City of Tacoma

IN WITNESS WHEREOF the parties hereto have executed this First Amendment as of the day and year first written above.

SELLER:

CITY OF TACOMA, a first class municipal corporation



Marilyn Strickland
Mayor

Attest:




Doris Sorum
City Clerk

Department Approval:



Ricardo Noguera
Director, Community and Economic Development

Approved as to form:



Deputy City Attorney

BUYER:

HOUSING AUTHORITY OF THE CITY OF TACOMA, a public body corporate and politic of the State of Washington

Michael Mirra

Michael Mirra
Executive Director

**EXHIBIT C
COVENANTS AND CONDITIONS**

When Recorded Return To:

City of Tacoma
Public Works Department
Real Property Services
747 Market Street, Room 737
Tacoma WA 98402-3701

Document Title:	COVENANTS AND CONDITIONS
Reference No.	
Grantor:	HOUSING AUTHORITY OF THE CITY OF TACOMA
Grantee:	CITY OF TACOMA
Legal Description:	
Additional Legal Description:	PAGE __, EXHIBIT A
Assessor's Tax Parcel Numbers:	2011220040, and 2011220050

**DECLARATION OF COVENANTS AND CONDITIONS
FOR 1120 AND 1124 MARTIN LUTHER KING JR. WAY**

The City of Tacoma, a Washington State municipal corporation (the "City"), and the **HOUSING AUTHORITY OF THE CITY OF TACOMA**, a public body corporate and politic of the State of Washington authorized to execute the powers of a public development authority (the "Developer") have agreed pursuant to that certain Purchase and Sale Agreement dated _____, 201__ (the "PSA"), to the terms and conditions for the sale/disposition of certain surplus City owned real property located at the street addresses of 1120 and 1124 Martin Luther King Jr. Way, as legally described in Exhibit A (the "Property") attached hereto and by this reference incorporated herein, which property will be conveyed to Developer by a Quit Claim Deed of even date herewith, referenced as City of Tacoma Deed #____ and recorded under Auditor's File No. _____ (the "Quit Claim Deed") immediately prior to recording this Declaration of Covenants and Conditions. Conveyance and recording of the Quit Claim Deed is conditioned upon Developer executing this Declaration of Covenants and Conditions (this "Covenant").

The City's primary purpose in conveying the Property to the Developer is to see it redeveloped and returned to productive use in a manner, primarily as to use, but also as to appearance, that benefits the surrounding community. To that end, this Covenant is an integral part of the consideration for the conveyance of the Property. By this Covenant, Developer agrees to use the Property for the purpose of redeveloping the existing buildings/improvements into a forty to fifty (40-50) unit, multi-family, affordable housing complex with at least thirty (30) units focused on households earning approximately 50-60% of Area Median Income, adjusted for family size (the "Designated Purpose").

In light of the foregoing, and as consideration for the conveyance of the Property, the City and the Developer hereby covenant and agree as follows:

I. Developer Covenants.

A. Designated Purpose. Developer covenants to use the Property for the Designated Use for a period of no less than ten (10) years from the date Developer has completed its project on the Property (as verified by issuance of a certificate of occupancy).

B. Construction Commencement. Developer shall begin construction of its project on the Property no later than forty-five (45) days after Closing on the purchase of the Property in accordance with the terms and conditions of the PSA. If Developer violates the foregoing, the City shall have the right to rescind the conveyance of the Property to Developer in accordance with Section 8A of the PSA.

C. SBE and LEAP Participation. In constructing its project on the Property, Developer covenants to participate in the City of Tacoma's SBE and LEAP program at the level of five percent (5%) participation for the project.

D. Historic Preservation. Developer will design the Project to be aesthetically consistent with KSP's historic design at 1110-1112 and 1114 Martin Luther King Jr. Way; Developer will consult with the City of Tacoma's Historic Preservation Officer, the Landmarks Preservation Commission in advisory design review, and neighboring developments regarding design compatibility for the Project.

E. Cooperative Development with KSP. Pursuant to Section 7.3 of the PSA, prior to December 1, 2013, Developer must have entered into a Cooperative Development Agreement with KSP addressing, at least preliminarily to Seller's reasonable satisfaction, the elements of developing the Property such as complementary design and parking that are necessary for a coordinated development of the Property and the real property located at 1110-1112 and 1114 Martin Luther King Jr. Way. Developer hereby covenants to develop the Property consistent with the agreement memorialized in the Cooperative Development Agreement.

F. Completion of Construction. Developer hereby covenants to complete construction of the project on the Property no later than June 30, 2019.

G. Local Improvement District. Developer hereby covenants to not oppose the formation of any Local Improvement District ("LID") in which Developer, as the owner of the Property, is considered a benefitted owner, and Developer will either (a) make LID payments as assessed or (b) payments in lieu thereof, at its option.

II. City Covenants.

The City covenants to work cooperatively with Developer to meet the construction commencement deadline set forth herein and in the PSA and to assist Developer in order to achieve the following:

1. Compliance with development requirements and standards,
2. Landmarks Preservation Commission design approval, as necessary,
3. Building permit issuance, and
4. Issuance of certificate of occupancy upon project completion.

III. Miscellaneous Provisions.

A. No Joint Venture. It is not intended by this Covenant to, and nothing contained in this Covenant shall, create any partnership or joint venture or create the relationship of principal and agent between Developer and the City, or any of their successors in interest.

B. Enforcement and Remedies. In the event of any violation of any of the provisions of this Covenant by the parties, the non-violating party shall have the right to enforce the violated covenant by any appropriate proceedings at law or in equity, including the right to apply to a court of competent jurisdiction for an injunction against such violation. Any remedies specifically provided herein are non-exclusive and are in addition to all other remedies available to the non-violating party at law or in equity.

C. Covenants to Run With the Land. The City and Developer hereby declare their express intent that the covenants and conditions set forth in this Covenant shall run with the land for the period covenanted herein, and shall bind all successors in title to the Property.

D. Governing Law and Choice of Venue. This Covenant shall be governed by the laws of the State of Washington. Any action brought regarding this Covenant shall be brought in the Superior Court for the State of Washington in Pierce County.

E. Amendments. This Covenant may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the Official Records of Pierce County, Washington.

F. Severability. If any provision of this Covenant shall be found invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Covenant shall not in any way be affected or impaired thereby.

G. Recording. This Covenant shall be recorded in the real property records of Pierce County, Washington.

25th IN WITNESS WHEREOF, the Developer has hereunto set their hand and seal the
day of August, 2015.

DEVELOPER

**HOUSING AUTHORITY OF THE CITY OF TACOMA, a
public body corporate and politic of the State of Washington**

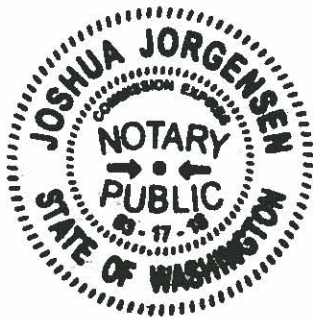
Michael Mirra

Michael Mirra
Executive Director

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that **MICHAEL MIRRA** is the person who appeared before me, and he acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **EXECUTIVE DIRECTOR** of the **HOUSING AUTHORITY OF THE CITY OF TACOMA**, a public body corporate and politic of the State of Washington, to be the free and voluntary act of such company for the uses and purposes mentioned in the instrument.

Dated this 25th day of August, 2015.



[Signature]
Notary Public in and for the
State of Washington
Residing in Pierce
My Commission Expires 5-17-18

CITY OF TACOMA

Ricardo Noguera,
Director, Community and Economic Development

Approved as to From

Deputy City Attorney

Legal Description Approved

City Surveyor

EXHIBIT A to Covenants and Conditions

That portion of the Southwest quarter of the Northeast quarter of Section 05, Township 20 North, Range 03 East, W.M. more particularly described as follows:

Lots 9 and 10, Block 1122, Map of New Tacoma, W.T. according to the Plat thereof filed for record on February 3, 1875 in Pierce County, Washington.

Together with Lots 11 and 12, Map of New Tacoma, W.T. according to the Plat thereof filed for record on February 3, 1875 in Pierce County, Washington.

All situate in the City of Tacoma, County of Pierce, State of Washington.

Exhibit D

City of Tacoma Deed No. D-_____

When Recorded Return To:

City of Tacoma
Public Works Department
Real Estate Services
747 Market Street, Room 737
Tacoma WA 98402-3701

Document Title:	DEED
Reference Number:	
Grantor:	CITY OF TACOMA
Grantee:	HOUSING AUTHORITY OF TACOMA
Legal Description:	
Additional Legal Description:	SEE PAGE 1 FOR FULL LEGAL DESCRIPTION
Assessor's Tax Parcel Numbers:	2011220040 and 2011220050

QUIT CLAIM DEED NO.

The **CITY OF TACOMA** ("Grantor"), a municipal corporation operating under the laws of the State of Washington as a first class city, conveys and quit claims to **HOUSING AUTHORITY OF THE CITY OF TACOMA**, a public body corporate and politic of the State of Washington, ("Grantee"), all of its rights, title, and interest, including any after acquired title, in that certain real property, appurtenances and improvements thereon, situate in the City of Tacoma, County of Pierce, State of Washington, for good and valuable consideration , legally described as follows:

That portion of the Southwest quarter of the Northeast quarter of Section 05, Township 20 North, Range 03 East, W.M. more particularly described as follows:

Lots 9 and 10, Block 1122, Map of New Tacoma, W.T. according to the Plat thereof filed for record on February 3, 1875 in Pierce County, Washington.

Together with Lots 11 and 12, Map of New Tacoma, W.T. according to the Plat thereof filed for record on February 3, 1875 in Pierce County, Washington.

All situate in the City of Tacoma, County of Pierce, State of Washington.

Dated this _____ day of _____, 201__

CITY OF TACOMA

ATTEST:

Marilyn Strickland, Mayor

Doris Sorum, City Clerk

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

On this _____ day of _____, 201__, before me personally appeared **MARILYN STRICKLAND**, to me known to be the **MAYOR** of the municipal corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that seal affixed is the corporate seal of said corporation.

Notary Public in and for the
State of Washington
My Commission Expires _____

Ricardo Noguera,
Director Community and Economic Development

Andrew Cherullo
Finance Director

Debbie L. Dahlstrom
Risk Manager

Approved as to Form:

Deputy City Attorney

Legal Description Approved:

Leonard J. Webster, P.L.S.
Chief Surveyor