

**AGREEMENT REGARDING THE PURCHASE, SALE AND
DEVELOPMENT OF REAL PROPERTY BETWEEN
THE CITY OF TACOMA AND
HQC USA, LLC**

This AGREEMENT REGARDING THE PURCHASE, SALE AND DEVELOPMENT OF REAL PROPERTY (this "Agreement") is entered into as of Dec. 22, 2016 between the CITY OF TACOMA, a first class municipal corporation ("Seller") and HQC USA LLC, a limited liability company of the State of Washington ("Buyer").

RECITALS

1. Seller is the owner of certain real property more particularly described in Section 1, below that Seller desires to sell into private ownership; provided that the development conditions set forth herein and agreed to by the Buyer are met.

2. Buyer desires to purchase the property from Seller, and agrees to develop the property on the terms and conditions set forth herein.

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

AGREEMENT

1. Real Property. Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth in this Agreement, the real property located in the City of Tacoma, County of Pierce and State of Washington, legally described in Exhibit A and depicted on Exhibit B, as both attached hereto and incorporated herein by this reference, together with all of Seller's right, title and interest in and to any rights licenses, privileges, reversions and easements pertinent to the real property (collectively, the "Property").

2. Deposit. Upon execution of the Agreement by both Seller and Buyer, Buyer shall deliver to Chicago Title Company in Tacoma, Washington (the "Title Company"), as escrow agent for the closing of this transaction, an earnest money deposit in the amount of Seventy Five Thousand U.S. Dollars (\$75,000), of which Fifty Thousand U.S. Dollars (\$50,000) shall be non-refundable (the "Deposit"). The Deposit will be held by the Title Company for the benefit of the parties pursuant to the terms of this Agreement. Any interest that accrues on the Deposit will be for the benefit of Buyer; provided, however, that if Buyer forfeits the Deposit to Seller pursuant to the terms of this Agreement, then all interest accrued on the Deposit will be paid to Seller.

3. Purchase Price. The total purchase price for the Property (the "Purchase Price") will be Seven Hundred Fifty Thousand U.S. Dollars (\$750,000), to which the Deposit shall be a fully applicable part. The Purchase Price, including the Deposit, will be paid to Seller in cash through escrow at closing.

3A. Additional Consideration. In addition to the Purchase Price and as part of the consideration for this Agreement, Buyer hereby agrees that, at Closing, the Property shall be made subject to the Development Covenants and Conditions attached hereto and incorporated herein as Exhibit C. The Development Covenants and Conditions shall be recorded against the Property at Closing in a separately recordable document and shall be enforceable upon their own terms. The Development Covenants and Conditions are an integral part of the consideration for

the Seller conveying the Property to the Buyer, and if Buyer fails to so develop the Property, Seller shall be entitled to all remedies set forth herein or otherwise available at law or in equity.

4. Title to Property.

4.1 Conveyance. At closing Seller shall convey the Property to Buyer by duly executed and acknowledged quit claim deed (the "Deed") in substantially the form attached hereto as Exhibit D, subject only to those encumbrances that Buyer approves pursuant to Section 4.3 below (the "Permitted Encumbrances").

4.2 Commitment. Upon execution of this Agreement, Seller authorizes Buyer to order a commitment for an owner's standard coverage policy of title insurance (or, at Buyer's election, an owner's extended coverage policy of title insurance) in the amount of the Purchase Price to be issued by the Title Company and accompanied by copies of all documents referred to in the commitment (the "Commitment").

4.3 Condition of Title. Buyer shall advise Seller by written notice what encumbrances to title, if any, are disapproved by Buyer ("Disapproved Encumbrances") within 10 (ten) business days of receipt of the Commitment. All monetary encumbrances other than non-delinquent ad valorem property taxes will be deemed to be disapproved. Seller will have ten (10) business days after receipt of Buyer's notice to give Buyer notice that (i) Seller will remove Disapproved Encumbrances, or (ii) Seller elects not to remove Disapproved Encumbrances. If Seller fails to give Buyer notice before the expiration of the ten (10) day period, Seller will be deemed to have elected not to remove Disapproved Encumbrances. Notwithstanding anything to the contrary in this Agreement, Seller shall remove from title on or before the Closing Date all monetary encumbrances other than those approved by Buyer. If Seller elects not to remove any Disapproved Encumbrances, Buyer will have fifteen (15) business days to notify Seller of Buyer's election either to proceed with the purchase and take the Property subject to those encumbrances, or to terminate this Agreement. If Buyer elects to terminate this Agreement pursuant to this section, the escrow will be terminated, the refundable portion of the Deposit will be returned immediately to Buyer and the non-refundable portion of the Deposit will be remitted to the Seller, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement. If this Agreement is terminated through no fault of Seller, then Buyer shall pay any costs of terminating the escrow and any cancellation fee for the Commitment.

4.4 Title Policy. Seller shall cause the Title Company to issue to Buyer at closing a standard coverage owner's policy of title insurance insuring Buyer's title to the Property in the full amount of the Purchase Price subject only to the Permitted Encumbrances (the "Title Policy"). The Title Policy must be dated as of the Closing Date.

5. Buyer's Due Diligence.

5.1 Feasibility Study. Buyer will have until September 1, 2017 (the "Feasibility Study Period") to conduct a review of the Property and satisfy itself with respect to the condition of and other matters related to the Property and its suitability for Buyer's intended use (the "Feasibility Study"). The Feasibility Study may include all inspections and studies Buyer deems reasonably necessary or desirable. Buyer and Buyer's agents, representatives, consultants, architects and engineers will have the right, from time to time, from and after the date of this Agreement to enter onto the Property and make borings, drive test piles and conduct any other reasonable tests and studies that may be necessary or desirable to ascertain the condition and suitability of the Property for Buyer's intended use. Such tests and inspections are to be performed in a manner not disruptive to the operation and current use of the Property. Buyer shall protect, defend

and indemnify Seller from and against any construction or other liens or encumbrances arising out of or in connection with its exercise of this right of entry and shall cause any such liens or encumbrances to be promptly released.

5.2 Non-Suitability. Buyer will have the right to terminate this Agreement if, in Buyer's good faith judgment, the Property is not suitable for Buyer's intended use. Buyer's right to terminate must be exercised by delivering written notice of its election to Seller on or before the expiration of the Feasibility Study Period. In the event Buyer does not complete the purchase, Buyer shall return the Property as near as is practicable to its original condition. If Buyer terminates this Agreement pursuant to this section, the refundable portion of the Deposit, less any costs advanced or committed for Buyer, will be returned to Buyer, this Agreement will terminate, and Seller and Buyer will be released from all further obligation or liability hereunder, except as otherwise specified by this Agreement and except for Buyer's obligations to indemnify Seller under this section. Failure by Buyer to notify Seller in writing of any matters affecting the suitability of the Property, whether or not an inspection has been carried out, shall deem Buyer to have waived this contingency.

5.3 Buyer's Indemnification. Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability and expense (including reasonable costs and attorneys' fees) in connection with all claims, suits and actions of every name, kind and description brought against Seller or its agents or employees by any person or entity as a result of or on account of injuries or damages to persons, entities and/or property received or sustained, arising out of, in connection with or as a result of the acts or omissions of Buyer, or its agents or employees in exercising its rights under this Agreement and the right of entry granted in connection with its Feasibility Study, except for claims caused by Seller's sole negligence.

6. Condition of the Property.

6.1 "As Is" "Where Is". Buyer acknowledges that the Property will be purchased under this Agreement in an "as is" "where is" condition. Seller shall surrender the Property in as good condition, except for normal wear and tear, as exists on the date of this Agreement. Seller agrees that it will not damage or commit waste on the Property between the date of acceptance of this Agreement and the date of closing.

6.2 Inspections. Buyer agrees that it will rely on its own inspections and evaluations of the Property, with the exception of any written documentation, including, but not limited to any disclosures required by law, provided to it by Seller, to determine the suitability of the Property for Buyer's intended use.

7. Conditions Precedent to Closing. All of the following must be achieved/completed prior to Closing on Buyer's purchase of the Property:

Seller's Conditions Precedent

7.1 City Council Approval. This Agreement, and the transaction and development contemplated hereby, must be duly approved by the Tacoma City Council prior to closing. If Tacoma City Council approval is not obtained, this Agreement will terminate, and the refundable portion of the Deposit, less any costs advanced or committed for Buyer, will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement. Nothing in this Paragraph 7.1 will obligate the Buyer to obtain City Council approval beyond the ordinary course of City procedure. City Staff shall take this proposed transaction to City Council for approval within 30 days of the execution of this Agreement.

7.2 Buyer Financing. No later than July 1, 2017 (the "Financing Feasibility Date"), Buyer must be able to prove to Seller's reasonable satisfaction that Buyer has procured funds/financing sufficient to (a) pay Seller the Purchase Price, and (b) complete its proposed project on the Property. Thereafter, Buyer shall be required to meet the following additional financial proof milestone prior to closing:

(c) No later than September 15, 2017 and notwithstanding anything presented by Buyer at the Financing Feasibility Date, Buyer must present proof that a minimum of Twenty-Five Million U.S. Dollars (\$25,000,000.00) cash equity has been transferred to a U.S. bank and is available for the purchase of the Property and for use toward the completion of the development.

Buyer acknowledges that Seller's primary purpose in entering into this Agreement is to achieve redevelopment and productive use of the Property. To that end, if Buyer is unable to prove to Seller's reasonable satisfaction that it has procured sufficient funds/financing for the project and meet the requirements of (a) through (c) above by the dates set forth above, Seller may discretionarily terminate this Agreement.

7.3 Development Plans. In accordance with the construction schedule set forth at Section 10 of this Agreement, Buyer must submit a complete plan set for its development on the Property in accordance with Buyer's written proposal dated August 31, 2016, which is incorporated herein by this reference. All submitted plans must comply with the terms and conditions of this Agreement and the Development Covenants and Conditions attached hereto and incorporated herein as Exhibit C. The final submitted plan set(s) must include, at a minimum, the following elements:

(a) The plans must be for a mixed-use apartment development with the following components (the "Project Components"):

1. Ground/below ground levels:

- (i) retail and residential lobby along street front, with parking for Library use, separated from the residential parking, and
- (ii) parking providing minimum of 150 parking stalls for retail and apartments.

2. Above ground levels:

- (i) 6 levels of market rate apartment units including studios, 1-bedroom and 2-bedroom units, and
- (ii) Indoor amenity space, 2nd level courtyard terrace and roof garden.

3. Additional required features:

- (i) Plans must provide separated parking area for Library and apartment use for the clarity and safety of vehicular circulation,
- (ii) Retail spaces along Tacoma Avenue South must be designed to energize use of the street and revitalize the pedestrian experience,
- (iii) Roof garden and green space must be included at the podium and roof level for apartment tenants in order to create visual interest for the public and overall cityscape,
- (iv) Design must promote a diverse unit mix promoting urban living and attracting working professionals and young families, and

(v) Plans must include cutting edge architectural and interior design to enrich the urban fabric of the project area.

(b) The Project Components of subsection 7.3(a) above, and the final submitted plans must include the following additional, specific details:

1. a minimum of 220,000 SF gross building area,
2. a minimum of 1000 SF of street level retail space,
3. a minimum of 150 market-rate apartment units, and
4. a minimum of 150 below grade secure parking stalls with 34 of those secure stalls designated and dedicated for Library use for a 5 year period, beginning at a rate of \$65/month with the rate to be renegotiated every five years based on a certain percentage below market rate for the area.

The foregoing are minimum requirements only. Buyer may add square footage to the project where feasible, and is encouraged to do so.

Buyer's Conditions Precedent

7.4 Feasibility. As set forth at Section 5.1 above, prior to Closing, Buyer must have concluded its Feasibility Study and satisfy itself with respect to the condition of, and other matters related to the Property and its suitability for Buyer's intended use.

7.5 Permits. Buyer shall have either obtained permits for its project on the Property or reasonable assurance of their issuance no later than ten (10) days prior to the scheduled Closing date.

Buyer acknowledges, however, that the Seller has not made any representation or warranty with respect to Buyer's ability to obtain any permit or approval, or to meet any other requirements for development of the Property or construction of the project. Nothing in this Agreement is intended to or shall be construed to require that the City, as Seller, exercise its discretionary authority under its regulatory ordinances to further the project nor binds the City to do so. Buyer understands that the City will process applications for permits and approvals in accordance with its normal processes.

Buyer or Seller may waive satisfaction of their specific conditions to Closing listed above at their discretion. To the extent any condition is not either satisfied or waived, either party may terminate this Agreement.

8. 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 that date which is thirty (30) days after the successful completion of Buyer's Financing Feasibility (see section 7.2), but in no event later than October 10, 2017 (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, forward the parts of the Deposit to the party entitled to receive them as provided in this Agreement 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, the sale proceeds are available for disbursement to the Seller, and legal title passes to the Buyer. The Development Covenants and Conditions shall be recorded against the Property at closing.

9. Closing Costs and Prorations. Seller shall pay the premium for a standard coverage owner's policy of title insurance in the full amount of the Purchase Price, state of Washington real estate excise taxes applicable to the sale, and one-half of the Escrow Agent's escrow fee. Buyer

shall pay the additional premium, if any, attributable to an extended coverage owner's policy of title insurance (if elected by Buyer) and any endorsements required by Buyer, any financing costs, the cost of recording the deed and any financing documentation, and one-half of the Escrow Agent's escrow fee. Property taxes and assessments for the current year, water and other utility charges, if any, shall be prorated as of the Closing Date unless otherwise agreed. Seller is a property tax exempt organization pursuant to R.C.W. 84.36.010, and therefore property taxes will only be due from Buyer for its ownership from and after the Closing Date.

10. Development Conditions and Timeline. In order to be compliant with this Agreement and with the Development Covenants and Conditions, Buyer must strictly adhere to the following development/construction schedule:

- (a) Buyer shall complete any environmental investigation of the Property by January 1, 2017,
- (b) Buyer shall participate in a project scoping meeting by December 16, 2016,
- (c) Buyer shall comply with the Financing Feasibility Date set forth in 7.2 above,
- (d) Buyer shall submit for Site Development Review by May 1, 2017,
- (e) Buyer shall submit ninety percent (90%) complete permit design documents by July 1, 2017,
- (f) Buyer shall close on the sale of the Property by the Closing Date set forth in Section 8 above.
- (g) Buyer shall commence construction by October 31, 2017, and
- (h) Buyer shall complete construction and commence operating by September 1, 2019.

For purposes of this Agreement, "commence construction" shall mean that Buyer, or its agents, employees or contractors have begun construction work involving the foundation or the structure of the building(s) to be constructed as part of the project. Site preparation, grading, excavation and mobilization alone are not sufficient to "commence construction" and prevent Seller's Rescission Right (set forth below) from accruing. If Buyer fails to commence construction of the project by the construction commencement date set forth in 10(g) above and Seller has not given written notice of its intent to exercise the Rescission Right by the 60th day after the commence construction, then Seller shall be deemed to have waived its right to exercise its Rescission Right.

For purposes of this Agreement, "commence operation" shall mean that Buyer, or its agents, employees or contractors have let out and the tenant has opened at least one ground level retail space in the project, the required parking is open and available for daily use, and that the apartments are available for rental and occupancy.

11. Seller's Rescission Right. Seller shall have the right to rescind conveyance of the Property under the following, two circumstances ("Rescission Right"):

First, if Buyer fails to "commence construction" of the project on the Property by the date set forth in 10(g) above, Seller shall have the discretionary right to rescind the sale of the Property by refunding the Purchase Price to Buyer.

Second, In the event that Buyer fails to substantially complete the project on the Property by the date set in 10(h) above, or if at any time during construction of the project, Buyer ceases construction for six (6) months or more and fails to cure such cessation within sixty (60) days of Seller's delivery of written notice of its intent to exercise its Rescission Right, Seller shall have the right to rescind the conveyance of the Property by refunding the Purchase Price.

Notwithstanding either of the foregoing triggering events, if Buyer cures its failure to commence construction or its cessation of construction prior to sixty (60) days' passage of Seller's notice of its intent to rescind, Seller's Rescission Right shall be held in abeyance pending completion of the project.

The reconveyance of the Property pursuant to this Rescission Right shall be realized no later than sixty (60) days following Seller's notice of exercise of the Rescission Right. If Buyer commences construction or completes construction within the sixty (60) day notice of exercise of the Rescission Right at any time prior to reconveyance, Seller's notice shall lapse. Seller and Buyer agree that the reconveyance of the Property pursuant to Seller's Rescission Right is self-executing and that Buyer shall execute a reconveyance deed to Seller upon presentation and payment by Seller. If Buyer fails to reconvey the Property to Seller as provided in this Section 11, then Buyer shall pay to Seller liquidated damages in the amount of \$500 per day until the Property is reconveyed as required in this section. The parties agree that Seller's damages in the event of such delay are difficult to measure and such liquidated damages are a reasonable estimate of the damages that Seller will suffer for Buyer's delay in reconveying the Property as provided herein. Buyer is entitled to specific performance of this Rescission Right.

Buyer shall pay all transfer and excise taxes (to the extent not exempt under WAC 458-61A-209) in connection with such reconveyance. The deed will be in substantially the same form as used to convey the Property to Buyer. Upon such reconveyance to Seller, no encumbrances shall exist on title other than those that existed when title transferred to Buyer, those consented to by Seller in writing (except any Mortgage, which shall not be a permitted encumbrance) and those that were recorded as part of the closing of the acquisition of the Property. Buyer shall be responsible for obtaining the release of any Mortgage. If Seller exercises the Rescission Right, Buyer shall be released from further obligations under this Agreement, except those that by their terms expressly survive termination. If Buyer commences or completes construction prior to Seller's exercise of the Rescission Right, the Rescission Right shall terminate as to the present notice and intention to exercise. At Buyer's request, upon commencement of construction, Seller shall provide written confirmation to a Mortgagee that commencement of construction has occurred to satisfy a condition of a Mortgagee to advance funds under a construction loan.

12. Casualty Loss. Seller shall promptly notify Buyer of any event prior to the Closing Date which causes damage to or destruction of any portion of the Property. If Buyer and Seller cannot come to an agreement regarding any such damage to or destruction of the Property, including the settlement of any insurance claims, then Buyer and Seller will each have the right to terminate this Agreement by giving written notice of termination to the other party within twenty (20) days after receipt of actual notice of such casualty loss. Upon exercise of such termination election by either party, this Agreement will terminate, and the Deposit will be returned to Buyer.

13. Possession. Seller shall deliver possession of the Property to Buyer on the Closing Date. Seller shall remove any and all personal property from the Property on or before the Closing Date, unless specifically authorized otherwise in writing by Buyer.

14. Events of Default. In the event Buyer fails, without legal excuse to complete the purchase of the Property, Seller shall be entitled to retain the nonrefundable portion of the Deposit as well as have recourse to any other remedies available at law or in equity including without limitation specific performance. In the event Seller fails, without legal excuse, to complete the sale of the Property, Buyer shall be entitled to immediate return of the refundable portion of the Deposit, and may pursue any remedies available to it in law or equity, including specific performance.

15. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Seller: City of Tacoma, Public Works Department

Real Property Services
747 Market Street, Rm. 737
Tacoma, WA 98402

With a copy to: City of Tacoma, Legal Department
747 Market Street, Rm. 1120
Tacoma, WA 98402

Buyer: HQC USA LLC
15 S Grady Way, Suite 517
Renton, WA 98057

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail.

16. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts.

17. Brokers and Finders. Each party represents and warrants to the other that, to such party's knowledge, no broker, agent or finder is involved in this transaction. In the event any broker or other person makes a claim for a commission or finder's fee based upon the transaction contemplated by this Agreement, the party through whom said broker or other person makes its claim shall indemnify and hold harmless the other party from said claim and all liabilities, costs and expenses related thereto, including reasonable attorneys' fees, which may be incurred by such other party in connection with such claim. This indemnity shall survive the closing of this transaction.

18. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

19. Continuation and Survival of Representations and Warranties. All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of the time of closing, will be deemed to be material and will survive the execution and delivery of this Agreement and the delivery of the Deed and transfer of title for a period of 6 (six) months whereupon they shall terminate. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

20. Governing Law. This Agreement will be governed and construed in accordance with the laws of the state of Washington without recourse to any principles of Conflict of Laws.

21. Attorney Fees. If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy proceeding.

22. Time of the Essence. Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

23. FIRPTA. The Escrow Agent is instructed to prepare a certification or equivalent that Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act ("FIRPTA"), and Seller agrees to sign this certification. If Seller is a "foreign person" as the same is defined by FIRPTA, and this transaction is not otherwise exempt from FIRPTA, Escrow Agent is instructed to withhold and pay the required amount to the Internal Revenue Service.

24. Waiver. Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.

25. Nonmerger. The terms and provisions of this Agreement, including without limitation, all indemnification obligations and obligations to develop the Property that, by their terms extend beyond the Closing Date, will not merge in, but will survive, the closing of the transaction contemplated under this Agreement.

26. Assignment. Buyer shall not assign this Agreement without Seller's prior written consent, which consent may not be unreasonably withheld or delayed.

27. Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

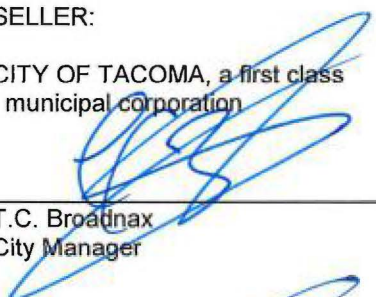
28. Additional Acts. Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any party hereto, the parties agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances, which may reasonably be required to give effect to the Agreement contemplated herein.

29. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the purchase and sale of the Property, and supersedes all prior agreements and understandings, oral or written, between the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

SELLER:

CITY OF TACOMA, a first class
municipal corporation

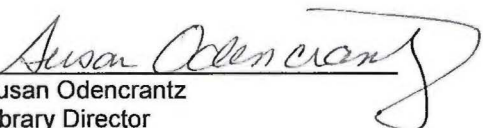


T.C. Broadnax
City Manager



Andrew Cherullo
Finance Director

Department Approval:



Susan Odencrantz
Library Director

SJH
12-22-2016

Second signature page to Agreement Regarding the Purchase, Sale and Development of Real Property Between the City of Tacoma and HQC USA, LLC

Approved as to form:



Office of City Attorney

BUYER:



HQC USA LLC, a limited liability company

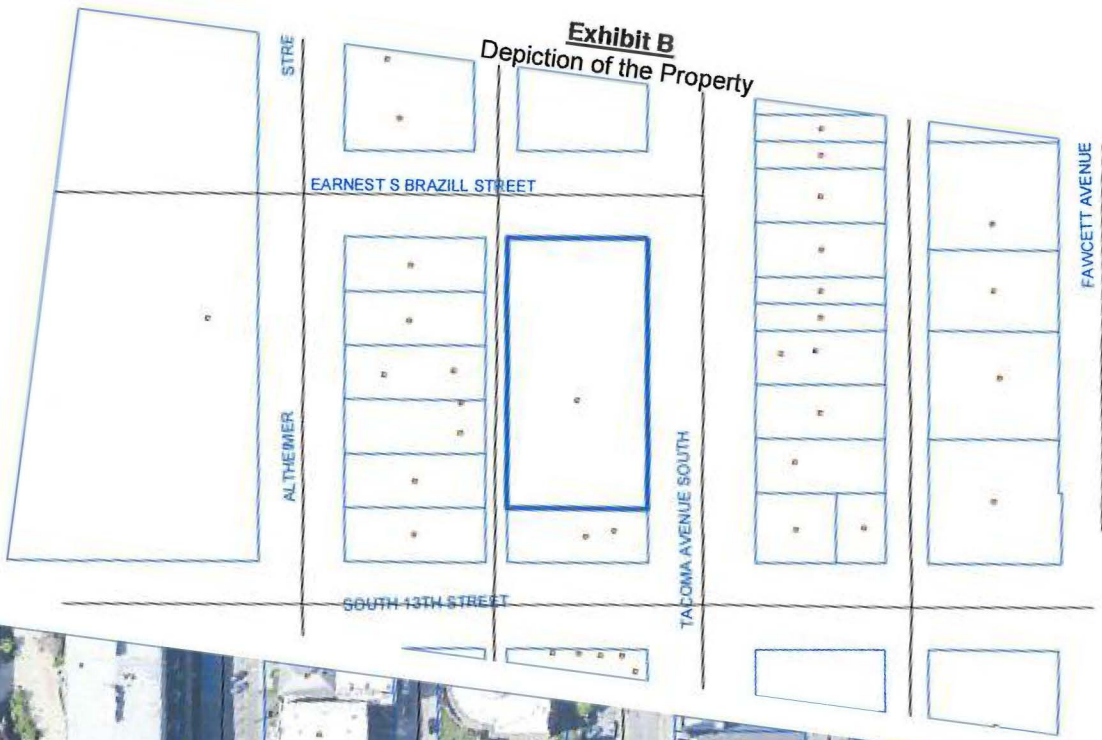
Exhibit A

Legal Description of the Property

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, Block 1212, Map of New Tacoma, according to the plat thereof filed in Volume A of Plats, in Pierce County, Washington; TOGETHER with the Easterly 10 feet of alley abutting thereon, vacated by Ordinance No. 2323 of the City of Tacoma.

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

Exhibit B
Depiction of the Property



**EXHIBIT C
DEVELOPMENT 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:	DEVELOPMENT COVENANTS AND CONDITIONS
Reference No.	
Grantor:	HQC USA LLC, a Washington limited liability company
Grantee:	CITY OF TACOMA
Legal Description:	
Additional Legal Description:	PAGE __, EXHIBIT A
Assessor's Tax Parcel Number:	2012120011.

**DECLARATION OF DEVELOPMENT COVENANTS AND CONDITIONS
FOR THE DEVELOPMENT OF REAL PROPERTY
AT 1210 TACOMA AVENUE SOUTH**

The City of Tacoma, a Washington State municipal corporation (the "City"), and **HQA USA LLC**, a Washington limited liability company (the "Developer") have agreed, pursuant to that certain AGREEMENT REGARDING THE PURCHASE, SALE AND DEVELOPMENT OF REAL PROPERTY dated _____, 201__ (the "PSA"), to the terms and conditions for the sale/disposition and development of certain surplus City owned real property located at 1210 Tacoma Avenue South in the City of Tacoma identified by Pierce County Tax Parcel No. 2012120011, and 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 within a commercially reasonable time. 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 developing the Property into a mixed use, apartment development as further set forth in Section I below, to be constructed at 1210 Tacoma Avenue South in the City of Tacoma in conformance with Developer's proposal dated August 31, 2016, (the "Designated Development Use").

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 (this "Covenant"):

I. Developer Covenants.

A. Designated Purpose. Developer covenants to use and develop the Property in conformance with the PSA as further detailed in Developer's proposal dated August 31, 2016 (the "Proposal"). To the extent that any development plans approved by the City deviate from the Proposal, the development plans shall control and Developer shall develop the Property in conformance with the Development Plans. In the absence of any such deviations, Developer shall develop the Property to include, at a minimum, the following:

1. Ground/below ground levels:

- (i) retail and residential lobby along street front, with parking for Library use, separated from the residential parking, and
- (ii) parking providing a minimum of 150 parking stalls for library, retail and apartments.

2. Above ground levels:

- (i) 6 levels of market rate apartment units including studios, 1-bedroom and 2-bedroom units, and
- (ii) Indoor amenity space, 2nd level courtyard terrace and roof garden.

3. Additional required features:

- (i) Plans must provide separated parking area for Library and apartment use for the clarity and safety of vehicular circulation,
- (ii) Retail spaces along Tacoma Avenue South must be designed to energize the use of the street and revitalize the pedestrian experience,
- (iii) Roof garden and green space must be included at the podium and roof level for apartment tenants in order to create visual interest for the public and overall cityscape,
- (iv) Design must promote a diverse unit mix promoting urban living and attracting working professionals and young families, and
- (v) Plans must include cutting edge architectural and interior design to enrich the urban fabric of the project area.

(b) The Project Components of subsection I.A.1. above, and the final submitted plans must include the following additional, specific details:

1. a minimum of 220,000 SF gross building area,
2. a minimum of 1000 SF of street level retail space,
3. a minimum of 150 market-rate apartment units, and
4. a minimum of 150 below grade secure parking stalls with 34 of those secure stalls designated and dedicated for Library use for a 5 year period, beginning at a rate of \$65/month with the rate to be renegotiated every five years based on a certain percentage below market-rate for the area.

The foregoing are minimum requirements only. Developer may add square footage to the project where feasible, and is encouraged to do so. The above development requirements are referred to herein as the "Designated Development Use."

B. Construction Commencement/Completion.

(1) Developer shall begin construction of its project on the Property no later than October 31, 2017 in accordance with the construction schedule found at Section 10 of the PSA. That construction schedule is restated here as follows:

- (a) Developer shall complete any environmental investigation of the Property by January 1, 2017,
- (b) Developer shall participate in a project scoping meeting by December 16, 2016,
- (c) Developer shall comply with the Financing Feasibility Date set forth in 7.2 above,
- (d) Developer shall submit for Site Development Review by May 1, 2017,
- (e) Developer shall submit ninety percent (90%) complete permit design documents by July 1, 2017,
- (f) Developer shall close on the sale of the Property by the Closing Date set forth in Section 8 above.
- (g) Developer shall commence construction by October 31, 2017, and
- (h) Developer shall complete construction and commence operating by September 1, 2019.

(2) Once construction is commenced, Developer must diligently pursue construction to completion. If at any time during construction of the project, Developer ceases construction for six (6) months or more, Developer shall be in violation of this Covenant as further specified in Sections 10 and 11 of the PSA .

(3) If Developer fails to meet any of the milestones in the construction schedule, the City shall have the right to rescind the conveyance of the Property to Developer in accordance with Section 11 of the PSA.

(4) Notwithstanding any violation of B.1-3 above, if Developer cures its failure to commence construction, its cessation of construction, or failure to complete timely construction of the project prior to sixty (60) days' passage of Seller's notice of its intent to rescind, Seller's Rescission Right shall be held in abeyance.

C. Construction Completion. Developer covenants to complete all construction no later than September, 2019.

D. Gross Floor Area Ratio. Developer covenants that Gross Floor Area Ratio (FAR) for the project, excluding below grade spaces, shall be at least 2.0.

E. SBE and LEAP Participation. In constructing its project on the Property, Developer agrees to use its best efforts to participate in the City of Tacoma's SBE and LEAP program as outlined in Exhibit B hereto.

F. 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.

G. Development Team. Developer has agreed to employ architects, engineers and construction firms, contractors and subcontractors that have a minimum of five (5) years' experience in the Tacoma/Pierce Seattle/King County areas in Washington in constructing its project on the Property, and shall identify a project manager to oversee all aspects of the project and coordinate with City planning, permitting and development staff;

H. Local Staffing. In constructing its project on the Property, Developer intends to promote hiring staff from the Tacoma/Pierce County area.

I. Public Art. Developer agrees to have discussions with the City of Tacoma's Arts Administrator on the possibility of incorporating public art into this project..

J. City Covenants.

The City covenants to work cooperatively with Developer to meet the construction commencement deadline and subsequent construction completion deadlines 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. Design approval,
3. Building permit issuance, and
4. Issuance of certificate of occupancy upon project completion.

III. Indemnification of the City.

A. Developer covenants to indemnify, defend, and hold the City harmless from and against all claim, liability, loss, damage, cost, or expense (including reasonable attorneys' fees, court costs, and amounts paid in settlements and judgment) incurred in connection with Developer's development activity, construction activity, or other liability arising in any manner out of its activities on the Property, including the construction of improvements on the Property, as well as any act or omission of Developer or its members, agents, employees, representatives, contractors, subcontractors, successors, assigns or invitees, on or with respect to the Property. The City shall not be entitled to such indemnification to the extent that such claim, liability, loss, damage, cost or expense is caused by the negligence or willful misconduct of the City.

B. Promptly following receipt of notice, the City shall give Developer written notice of any claim for which Developer has indemnified the City hereunder, and the relevant party shall thereafter vigorously defend such claim on behalf of the City. Failure to give prompt notice to Developer shall not constitute a bar to the indemnification hereunder unless such delay has prejudiced Developer in the defense of such claim. If Developer is required to defend any action or proceeding pursuant to this Section to which action or proceeding the City is made a party, the City shall be entitled to appear, defend or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and to the extent the City is indemnified under this section, Developer shall bear the cost of the City's defense, including reasonable attorneys' fees and costs. No settlement of any non-monetary claim shall be made without the City's written approval, not to be unreasonably withheld.

C. Developer agrees to include in each construction contract for construction of its project or other work on the Property that if there is liability for damage or injury during construction, each contractor waives immunity under the Workers' Compensation Laws of the State of Washington, Title 51 RCW, for claims brought by its employees against the City. Further, each contractor shall agree to indemnify and hold the City harmless for damages attributable to the contractor's negligence.

D. The City shall indemnify, defend, and hold Developer harmless from and against all claim, liability, loss, damage, cost, or expense (including reasonable attorneys' fees, court costs, and amounts paid in settlements and judgment) incurred in connection with the City's negligence or other legally culpable conduct in performing its obligations under this Covenant.

IV. 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, or for specific performance. 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, 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 without regard to any principles of Conflicts of Laws. 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.

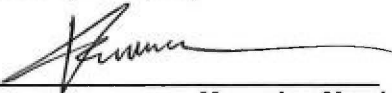
F. Severability. If any provision of this Covenant shall be found invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Covenant shall not in any way be affected or impaired thereby.

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

IN WITNESS WHEREOF, the Developer has hereunto set its hand and seal the _____ day of _____, 201__.

DEVELOPER

**HQA USA LLC, a Washington
Limited Liability Company**


_____, **Managing Member**

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Quan Truong 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 Managing Member of **HQA USA LLC**, a Washington limited liability company, to be the free and voluntary act of such company for the uses and purposes mentioned in the instrument.

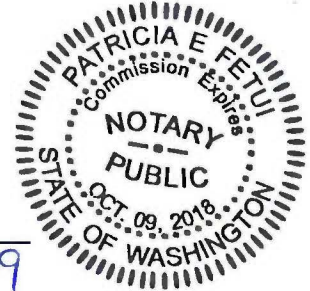
Dated this 2nd day of December, 2016.

Notary Public in and for the
State of Washington

Patricia E. Fetui

My Commission Expires 10/09/2018

Residing in 2602 S 38th St
TACOMA, WA 98409



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

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, Block 1212, Map of New Tacoma, according to the plat thereof filed in Volume A of Plats, in Pierce County, Washington; TOGETHER with the Easterly 10 feet of alley abutting thereon, vacated by Ordinance No. 2323 of the City of Tacoma.

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

Exhibit B to Covenants and Conditions

CITY OF TACOMA LEAP & SBE PARTICIPATION

Developer agrees to use its best efforts to comply with the City of Tacoma's Local Employment and Apprenticeship Training Program (LEAP) and Small Business Enterprise (SBE) program by attempting to ensure that all contractors performing work on the project make their best efforts to comply with the program requirements. In an effort to develop relationships with the local community and promote the local work force and subcontracting businesses, Developer will notify each contractor and Bidders of the LEAP and SBE requirements and strongly encourage participation in the programs.

- I. **LEAP Utilization Goal:** The City of Tacoma's LEAP program has established an annual local hire/apprentice utilization goal of 15 percent of total workforce hours.
- II. **SBE Annual Goal:** The City of Tacoma's SBE program has established an annual subcontracting goal of 22 percent.

Contractors that agree to comply with the City of Tacoma LEAP and SBE programs must track the local hire and apprentice hours worked, and SBE contracts awarded under Developer's project. It shall be the responsibility of the contractors that qualify for and are participating in each respective program to supply the City of Tacoma with a monthly "Progress Report" that shows proof of participation in LEAP and SBE. A final participation tracking report shall be prepared by the Developer and provided to the City of Tacoma upon completion of the project.

LEAP and SBE can assist contractors in identifying qualified workers and subcontractors in meeting their business and workforce needs as identified in their respective bid submittals and scopes of work.

Program Contact:

SBE/LEAP <http://www.cityoftacoma.org/leap>
<http://www.cityoftacoma.org/Page.aspx?nid=136>

Keith Armstrong 253.594.7933 karmstrong@cityoftacoma.org.

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: HQA USA LLC
Legal Description:
Additional Legal Description: SEE PAGE 1 FOR FULL LEGAL DESCRIPTION
Assessor's Tax Parcel Numbers: 2012120011

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 **HQA USA LLC**, a Washington limited liability company, ("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 the consideration of **TEN and 00/100 DOLLARS (\$10.00)**, legally described as follows:

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.

State of Washington

Notary Public in and for the

My Commission Expires _____



Ricardo Noguera,
Director Community and Economic Development

Andrew Cherullo
Finance Director

*SLH
12-22-2016*

Approved as to Form:

Deputy City Attorney

Legal Description Approved:

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