

REAL ESTATE PURCHASE AND SALE AGREEMENT

This REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of October 16, 2013 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, Seller is the owner 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), which are more particularly described in Section 1, below; and

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer the aforementioned real property on the terms and conditions set forth herein; and

WHEREAS, the real property described in Section 1 below, is being conveyed by Seller via a negotiated sale with the Buyer, and Buyer has agreed to develop the Property (as defined below) in conjunction with **KELLOGG SICKER POCHERT LLC** ("KSP") and its project on the immediately adjacent real property as set forth in a Cooperative Development Agreement to be entered into between Buyer and KSP in order to coordinate complementary design and parking arrangements, among other things; and

WHEREAS, Buyer intends, and has agreed to develop the real property in a manner that benefits the community by providing forty to fifty (40-50) units of mixed-income, affordable housing targeting households earning between thirty and eighty percent (30-80%) of area median income, adjusted for family size, developed in a way that will be aesthetically consistent with neighboring development (the "Project");

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 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 and improvements legally described in Exhibit A and depicted in Exhibit B, together with all of Seller's right, title and interest therein (collectively the "Property").
2. **Monetary Consideration.** Seller has agreed, that in order to assist Buyer in its mission of providing high quality, stable and sustainable housing and supportive services to people in need, and in furtherance of Seller's own goals for economic redevelopment and productive reuse of the Property and for the benefit of the surrounding community, to forego the receipt of a monetary purchase price for the Property.
3. **Additional Consideration.** In addition to the public benefits referenced in Section 2, as part of the consideration for this Agreement, Buyer hereby agrees that, at Closing, the Property shall be made subject to the Covenants and Conditions attached hereto and incorporated herein as Exhibit C. The Covenants and Conditions shall be recorded against the Property at Closing in a separately recordable document.

ORIGINAL

4. INTENTIONALLY OMITTED.

5. Title to Property.

5.1 Conveyance. At Closing, Seller shall convey the Property to Buyer by duly executed and acknowledged Quit Claim Deed (the "Deed") subject only to those encumbrances that Buyer approves pursuant to Section 5.3 below (the "Permitted Encumbrances"). The Deed shall be substantially in the form attached hereto as Exhibit D.

5.2 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) for the Property in the amount equal to the appraised (or the assessed value if no appraisal is required by either party) value of the Property to be issued by a Title Company mutually agreeable to the parties ("Title Company") and accompanied by copies of all documents referred to in the commitment ("Commitment").

5.3 Condition of Title. If Buyer elects to obtain a Commitment for the Property, Buyer shall review any encumbrances on the Property listed in the Commitment and 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. Any 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. 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, any opened escrow will be terminated, 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 be responsible for any costs of terminating the escrow and any cancellation fee for the Commitment. Refusing to remove any objected to encumbrance shall not be considered the fault of Seller in any termination. If Buyer elects not to obtain a Commitment for the Property, this Section 5.3 shall not apply.

Buyer acknowledges that Seller has granted KSP a right of first purchase for the Property that only accrues, and may only be exercised, in the event that this Agreement has been terminated by either party without proceeding to Closing on the Property. This right of first purchase shall not be considered a Disapproved Encumbrance.

5.4 Title Policy. Buyer, at its election, may 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 an amount determined by Buyer subject only to the Permitted Encumbrances (the "Title Policy"). The Title Policy must be dated as of the Closing Date.

6. Buyer's Feasibility.

6.1 Feasibility Study. Buyer will have until June 30, 2014 (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 as well as inquiry and/or project scoping meetings with Seller's Planning and Development Services Department. 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. Buyer shall coordinate all such entries with Seller through Seller's Facilities Division of its Public Works Department. All tests and inspections are to be performed in a manner not disruptive to the operation of the Property and in a manner that does not compromise the structural integrity of any improvements on 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. Buyer and Seller may extend the Feasibility Study Period for one thirty (30) day extension by mutual agreement in a written supplement hereto.

6.2 Non-Suitability. At the expiration of the Feasibility Study Period, 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. 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 be deemed to be a waiver by Buyer of this contingency.

6.3 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.

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 contemplated herein, is subject to Tacoma City Council approval. If Tacoma City Council approval has not been obtained prior to the execution of this Agreement, such approval must be obtained prior to Closing. In the event that the Tacoma City Council has not approved this Agreement at least ten (10) days prior to the Closing Date, this Agreement will automatically terminate, and all documents and other funds deposited, if any, will be returned to the Buyer, 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 Seller to obtain City Council approval beyond the ordinary course of City procedure.

7.2 Buyer Financing. In order to proceed to Closing on the Property, Buyer must meet the following financing feasibility milestones/deadlines:

7.2.1 Buyer must be able to demonstrate to Seller's reasonable satisfaction no later than August 31, 2014 that it has obtained all financing necessary for Buyer to complete its predevelopment architecture and engineering/design and related Project activities;

7.2.2 No later than May 31, 2015, Buyer must submit to Seller its final design, and construction cost estimates for Seller's reasonable approval;

7.2.3 No later than April 30, 2016, 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; and

7.2.4 No later than June 1, 2016, 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, 2016, Seller may discretionarily terminate this Agreement and market the Property to other buyers.

7.3 Cooperative Development Agreement With KSP. No later than December 1, 2013, Buyer 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. If Buyer is unable to prove to Seller's reasonable satisfaction that cross-coordinational issues have been addressed in a Cooperative Development Agreement with KSP, Seller may discretionarily terminate this Agreement.

7.4 Construction Plan/Schedule. No later than thirty (30) days prior to the scheduled Closing Date, Buyer and Seller must have agreed upon construction plans and a construction schedule for Buyer's project to be completed on the Property.

Buyer's Conditions Precedent

7.5 Feasibility. As set forth at Section 6.1 above, prior to Closing, Buyer must have concluded its Feasibility Study and have satisfied itself with respect to the condition of, and other matters related to the Property and its suitability for Buyer's intended use.

7.6 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 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.

ORIGINAL

8. Closing.

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, 2016 (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.

8.2 Closing Costs and Prorations. Buyer shall be responsible for state of Washington real estate excise taxes if any are applicable to the sale, any Escrow Agent's escrow fee, all costs associated with title insurance coverage for the Property (if elected by Buyer) and any endorsements required by Buyer, any financing costs, the cost of recording the deed and any financing documentation. 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. Both Buyer and Seller are property tax exempt organizations pursuant to RCW 35.82.210 and RCW 84.36.010, respectively, and therefore it is not anticipated that property taxes will be due from either.

8.3 Representations and Warranties. As further set forth in the Covenants and Conditions (Exhibit C), Buyer represents and warrants 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 July 31, 2017;

8.3.2 In constructing the Project on the Property, Buyer shall participate in the City of Tacoma's SBE and LEAP program at the level of five percent (5%) participation for the project;

8.3.3 Buyer will design the Project to be aesthetically consistent with KSP's historic design at 1110-1112 and 1114 Martin Luther King Jr. Way; Buyer 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;

8.3.4 Buyer intends, where possible, to employ construction firms, contractors and subcontractors that have a presence in Pierce County, Washington in constructing the Project on the Property;

8.3.5 In constructing the Project on the Property, Buyer intends to promote hiring staff from the Tacoma/Pierce County area;

8.3.6 Buyer agrees to construct the Project to include a mix of housing units focused on households at approximately 50-60% of Area Median Income and to include approximately forty to fifty (40 to 50) units; Buyer will operate the Property for such use for a minimum of ten (10) years from completion of construction;

8.3.7 After Closing, Buyer shall not oppose the formation of any Local Improvement District ("LID") in which Buyer, as the owner of the Property, is

considered a benefitted owner and Buyer will either (a) make LID payments as assessed or (b) payments in lieu thereof, at its option.

8A. Condition Subsequent to Closing—Seller's Rescission Right for Failure to Start Construction. If Buyer fails to "commence construction" of its project on the Property by the forty-fifth (45th) day after Closing, Seller shall have the discretionary right to rescind the sale of the Property (the "Rescission Right") by giving written notice to Buyer. Upon giving such notice to Buyer, Buyer shall be obligated to sign a reconveyance deed conveying the Property back to Seller.

For purposes of this Agreement, "commencing construction" shall mean that Buyer, or its agents, employees or contractors have begun vertical 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 from accruing. If Buyer fails to commence construction of the Project by the construction start date set forth above and Seller has not given written notice of its intent to exercise the Rescission Right by the 180th day after the construction start date, then Seller shall be deemed to have waived its right to exercise the Rescission Right as of such 180th day.

The completion of the rescission shall be not later than fifteen (15) days following Seller's notice of exercise of the Rescission Right. 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 by Seller. If Buyer fails to reconvey the Property to Seller as provided in this Section 8A, 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 shall pay all transfer and excise taxes (to the extent not exempt under WAC 458-61A-209 or otherwise) 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, after Buyer's reconveyance, Buyer shall be released from further obligations under this Agreement, except those that by their terms expressly survive termination. If Buyer commences construction prior to Seller's exercise of the Rescission Right, the Rescission Right shall terminate. 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.

As a part of the Rescission Right, Seller may require that Buyer transfer to Seller all architecture/engineering/design documents/deliverables relevant to the Project, provided that Seller reimburse Buyer for the cost of said documents/deliverables.

9. Condition of the Property.

9.1 "AS-IS" Buyer acknowledges that the Property will be sold 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. The "as is" "where is" basis of this Agreement includes releasing Seller, without limitation, from all potential liabilities under all

ORIGINAL

applicable laws such as (by way of illustration and not limitation) the Model Toxics Control Act (RCW 70.105D *et seq*) and CERCLA (42 USC 103 *et seq*) and their related regulations.

9.2 Inspections. Buyer agrees that it will rely on its own inspections and evaluations of the Property, with the exception of 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. Buyer acknowledges that Seller has provided it copies of all printed materials Seller has in its possession regarding the current physical and environmental condition of the Property and all improvements thereon.

10. 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 shall terminate.

11. Possession. Seller shall deliver possession of the Property to Buyer once the Deed is recorded with the Pierce County Auditor.

12. Events of Default. In the event that either party defaults in its obligations hereunder, the non-defaulting party shall be entitled to whatever remedies are available to it in law or in equity, including without limitation, injunctive relief and specific performance.

13. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service, or 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, Community and Economic Development
Department
Attn: Ricardo Noguera, Director
747 Market Street, 9th Floor
Tacoma, WA 98402
Phone: 253-591-5139

With a copy to: City of Tacoma, Legal Department
Attn: Jeff H. Capell, Deputy City Attorney
747 Market Street, Rm 1120
Tacoma, WA 98402

Buyer: Tacoma Housing Authority
Attn: Steve Clair
902 South L Street
Tacoma, WA 98405
Ph. 253-207-4429

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, and if delivered by facsimile, the same day as verified.

14. Counterparts. This Agreement may be executed in any number of counterparts by the 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.

15. 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.

16. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer, and shall be attached as an addendum to this Agreement.

17. 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. 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.

18. Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Washington.

19. 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.

20. 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.

21. 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.

22. Non-merger. The terms and provisions of this Agreement, including without limitation, all indemnification obligations and the Rescission Right will not merge in, but will survive, the closing of the transaction contemplated under the Agreement.

23. Assignment. Buyer shall not assign this Agreement without Seller's prior written consent.

24. 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.

25. 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.

26. 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.

27. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby

IN WITNESS WHEREOF the parties hereto have executed this document 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

Legal Description(s) Approved


City Surveyor

BUYER:

24

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



Michael Mirra
Executive Director

Exhibit A

Legal Description

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 B

Depiction of the Property





The Property

**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 July 31, 2017.

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.

IN WITNESS WHEREOF, the Developer has hereunto set their hand and seal the _____ day of _____, 2011.

DEVELOPER

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

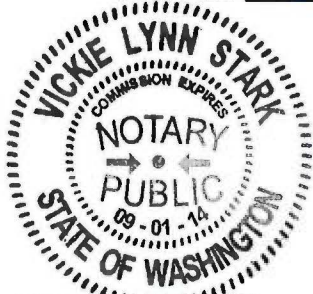
Michael Mirra

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 27th day of September, 2013.



Vickie Stark

Notary Public in and for the
State of Washington
Residing in TACOMA
My Commission Expires 9/1/14

R. N. N.

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