

When Recorded Return To:

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

CTI-87651-TC

Document Title:	Third Amendment to Real Estate Purchase and Sale Agreement
Grantor:	HQC USA LLC, A WASHINGTON LIMITED LIABILITY COMPANY
Grantee:	CITY OF TACOMA
Legal Description:	Full legal description on <u>Exhibit A</u>
Assessor's Tax Parcel Nos.	2012120011

THIRD AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This THIRD AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Third Amendment") is entered into as of _____, 2019 between the CITY OF TACOMA, a first class municipal corporation ("Seller") and HQC USA LLC, a Washington limited liability company ("Buyer/Developer").

RECITALS

WHEREAS, Buyer and Seller entered into that certain Real Estate Purchase and Sale Agreement (the "Original PSA") dated December 22, 2016, as amended by that certain First Amendment to Real Estate Purchase and Sale Agreement (the "First Amendment"), dated July 17, 2017, and that certain Second Amendment to Real Estate Purchase and Sale Agreement (the "Second Amendment"), dated June 7, 2018, (collectively the "Agreement") for the potential purchase of the real property more particularly described in Exhibit A of the Original PSA ("Property");

WHEREAS, Buyer and Seller entered into that certain Declaration of Development Covenants and Conditions for the Development of Real Property (the "DCC") dated as of July 27, 2017, and recorded on July 28, 2017, as Document Number 201707280005 in the official records of Pierce County, Washington, in connection with the potential purchase of the Property;

WHEREAS, Seller and Buyer now desire to enter into a Third Amendment to adjust certain post-closing development terms;

WHEREAS, this Third Amendment affords Developer, among other things, a fifteen month grace period from the imposition of liquidated damages for project delay; and

WHEREAS, except as expressly modified in this Third Amendment, the remainder of the Agreement and the DCC shall remain in full force and effect.

NOW THEREFORE, Seller and Buyer agree to the following amendments to the Agreement and the DCC:

AGREEMENT

1. **Amendment to Subsection 3 - Purchase Price** of the Agreement is amended to read as follows:

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.

2. **Amendment to Subsection 7.2 (c) - Buyer Financing** of the Agreement is amended to read as follows:

(c) No later than April 30, 2019, Developer must provide a fully executed commitment letter from a lender or equity partner demonstrating that the Developer has secured 100% financing to complete its proposed project on the Property.

3. **Amendment to Subsection 7.3 (a) - Development Plans** of the Agreement is amended to read as follows:

1. Ground/below ground levels:

(i) construct first floor in accordance with Tacoma Building Code 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 and apartments.

2. Above ground levels:

(i) 6 levels of market rate apartment units including studios, 1-bedroom and 2-bedroom units, and

(ii) 2nd level courtyard terrace and amenity space on the 7th floor.

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) Design must promote a diverse unit mix promoting urban living and attracting working professionals and young families, and

(iii) 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 180 apartment units, and
3. 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.”

4. **Amendment to Section 10 - Development Conditions and Timeline** of the Agreement and **Construction Commencement/Completion** (I)(B)(1) of the DCC are amended to read as follows:

In order to be compliant with this Agreement and with the DCC, Buyer must strictly adhere to the following development/construction schedule:

Add new section and re-letter subsequent sections:

- (h) Buyer shall submit for permit revisions to the City by June 4, 2019.
- (i) Buyer shall recommence construction by September 3, 2019.
- (j) Buyer shall complete construction and commence operating, having obtained a certificate of occupancy, by December 31, 2020.
- (k) Damages: The Developer is required to obtain a Certificate of Occupancy for the Project on or before December 31, 2020. In the event the Developer does not meet this deadline, the Developer will pay the following amount to the City:

Building Improvements: \$1,104/day

City will invoice Developer on a monthly basis for each day that Developer exceeds the date by which the Certificate of Occupancy must be issued (December 31, 2020). The amounts stated on the Invoice due from Developer shall be paid by the 10th of the following month, and until the Developer has obtained the Certificate of Occupancy.

Section (I)(B)(3) of the DCC is hereby deleted in its entirety.

5. **Amendment to Section 11 – Seller’s Rescission Right** of the Agreement. The first three full paragraphs of Section 11 of the Agreement are hereby deleted and replaced with the following:

Seller shall have the right to rescind conveyance of the Property (“Rescission Right”) if Buyer fails to recommence construction by September 3, 2019.

Notwithstanding the foregoing triggering event, if Buyer cures its failure to recommence 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.

The Rescission Right will terminate upon the recording of Deed of Trust against the Property in favor of 3650 CAL BRIDGE TACOMA LLC.

6. **Amendments to Exhibit “C” - DCC** The DCC and Exhibit “C” of the Agreement and its exhibits, are hereby further amended by this Third Amendment. In the event of any conflict between the terms of the DCC and/or Exhibit C and this Third Amendment, the terms and intent of this Third Amendment shall control.

7. Except as modified or amended herein, the Agreement and DCC remain in full force and effect.

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

SELLER:

CITY OF TACOMA, a first class municipal corporation

Elizabeth A. Pauli
City Manager

Department Approval:

Jeff Robinson
Community and Economic Development Department
Director

Approved as to form:

Deputy City Attorney

BUYER:

HQC USA LLC,
a Washington limited liability company

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____
County of _____

On _____, 2019, before me, _____ (name of notary), personally appeared, _____ (name of signatory), who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Notary Expiration Date: _____

ACKNOWLEDGMENT

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I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Notary Expiration Date: _____

EXHIBIT A

Legal Description

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.