



CITY OF KIRKLAND
Department of Finance & Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Tracey Dunlap, Deputy City Manager
Chris Dodd, Facilities Services Manager
Oskar Rey, Assistant City Attorney

Date: February 25, 2015

Subject: PROPOSED PURCHASE OF REAL PROPERTY - 6705 AND 6711 106TH
AVENUE NE, KIRKLAND

RECOMMENDATION:

Staff recommends that the Council approves the attached resolution to authorize the City Manager to enter into a Purchase and Sale Agreement for acquisition of Real Property located at 6705 and 6711 Ave NE, Kirkland and approves the proposed interfund loan.

BACKGROUND:

The Cross Kirkland Corridor (CKC) is fundamentally about making connections: connecting to the city via the corridor but also connecting the city back to the corridor. The corridor connects people to neighbors, kids and schools and a key component, businesses to residents, trail users and their employees. This unique opportunity to purchase this real property is consistent that vision and satisfies a part of the CKC Master Plan. By purchasing this property, the City can create direct access between the CKC and the Houghton Shopping Center and help increase economic growth in the area. Currently, there is no direct access to the Houghton Shopping Center from the CKC.

The attached Purchase and Sale Agreement represents the next step in the acquisition process and covers both parcels, Tax Parcel No. 7882600431, commonly known as 6711 106th Avenue NE, Kirkland, Washington ("6711 Parcel") and Tax Parcel No. 7882400432, commonly known as 6705 106th Avenue NE, Kirkland Washington ("6705 Parcel"). See map of parcels included as Attachment A. The purchase price for both parcels and the related multi-family structures is \$4,675,000. The City's appraisal of the property estimated the value at \$4,050,000, but noted that the prices for similar properties are rising at the rate of 2% per month. In addition, the owner has an offer in hand from a private developer to purchase the property at the price the City is proposing to pay. Given the unique and strategic location of the parcels relative to the CKC and the potential for other public uses that may include affordable housing or a future transit stop along the CKC, the City Manager believes that sufficient special conditions exist that support the proposed purchase price.

Funding

The proposed funding for the purchase is a 3-year interfund loan from the Water/Sewer Utility in an amount up to \$4.7 million (to recognize potential closing costs). Use of an interfund loan

provides the City with the ability to secure the strategically located property to establish access to the CKC, while allowing time to determine the best long-term use of the site. Based on that assessment, the appropriate sources to repay the interfund loan will be identified that may include issuance of Councilmanic bonds.

The State provides the minimum acceptable procedures for making and accounting for interfund loans as follows:

- The legislative body of a municipality must, by ordinance or resolution, approve all interfund loans, and provide in the authorization a planned schedule of repayment of the loan principal as well as setting a reasonable rate of interest (based on the external rate available to the municipality) to be paid to the lending fund.
- Interest should be charged in all cases, unless the borrowing fund has no other source of revenue other than the lending fund or the borrowing fund is normally funded by the lending fund.
- The borrowing fund must anticipate sufficient revenues to be in a position over the period of the loan to make the specified principal and interest payments as required in the authorizing ordinance or resolution.
- The term of the loan may continue over a period of more than one year, but must be "temporary" in the sense that no permanent diversion of the lending fund results from the failure to repay by the borrowing fund. A loan that continues longer than three years will be scrutinized for a "permanent diversion" of moneys.
- Appropriate accounting records should be maintained to reflect the balances of loans in every fund affected by such transactions.

Staff has analyzed the cash flow needs of the Water/Sewer Utility fund and finds that there are sufficient funds available to make this loan for the three year period. The estimated interfund loan terms will be:

- Up to \$4.7 million from the Water/Sewer utility fund,
- The term will be three years, but the loan can be repaid any time during that period,
- The interest rate paid on these loans will be 0.20%, based on the interest that those funds would be expected to earn during the loan term.
- Interest will accrue during the period and will be paid to the loaning fund at the point the long-term funding is put in place.

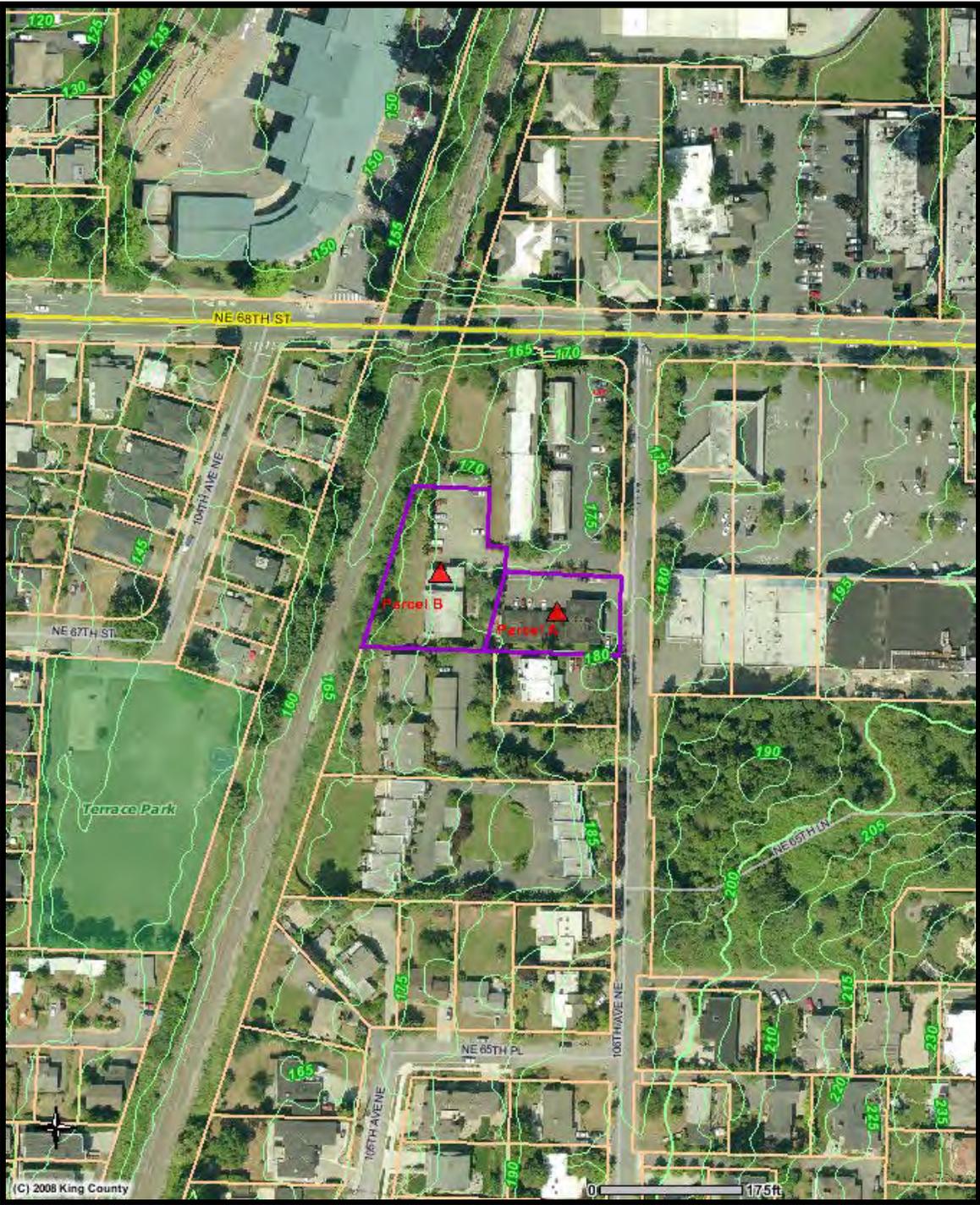
The proposed resolution includes the authorization of the interfund loan. It is important to recognize that the interfund loan represents short-term funding only and needs to be repaid in full with interest at that end of the term, once a long-term funding source is secured.

Other Agreement Terms

The Purchase and Sale Agreement includes a right of first refusal for 3 years to Mr. Doug Waddell as part of the terms of sale, unless the sale is to another public or non-profit entity (such as ARCH) or for any public purpose. The duration was set to coincide with the term of the interfund loan.

An inspection of the property was conducted on February 8, 2015 as part of the City conducted "due diligence" with respect to the land and the structures on the property. After the expiration of the inspection period, the parties would have until April 24, 2015 to close the transaction.

Assuming no major problems are discovered during the inspection period, City staff anticipates the City would proceed with closing on or before April 24, 2015 without the need for further Council action.



KING COUNTY ASSESSOR'S AERIAL PHOTOGRAPH

RESOLUTION R-5114

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE A REAL PROPERTY PURCHASE AND SALE AGREEMENT FOR PROPERTIES COMMONLY KNOWN AS 6711 106TH AVENUE NORTHEAST AND 6705 106TH AVENUE NORTHEAST, KIRKLAND, WASHINGTON, AND AUTHORIZING AN INTERFUND LOAN TO FINANCE THE ACQUISITION OF THE REAL PROPERTY.

1 WHEREAS, the City has determined it is in the public interest to
2 purchase real properties commonly known as 6711 106th Avenue NE,
3 Kirkland, Washington and 6705 106th Avenue NE, Kirkland Washington
4 (collectively, the "Property"); and
5

6 WHEREAS, an interfund loan from the Water/Sewer Utility Fund
7 to the Capital Projects Fund is required in order to finance the acquisition
8 of the Property; and
9

10 WHEREAS, the City expects that the funds loaned will be repaid
11 by bond proceeds or other resources identified by the City within three
12 years.
13

14 NOW, THEREFORE, be it resolved by the City Council of the City
15 of Kirkland as follows:
16

17 Section 1. The City Manager is hereby authorized and directed
18 to execute on behalf of the City of Kirkland a Real Property Purchase
19 and Sale Agreement for the Property substantially similar to that
20 attached to this Resolution as Exhibit "A."
21

22 Section 2. A loan in an amount not to exceed \$4.7 million is
23 hereby authorized from the Water/Sewer Utility Fund to the Capital
24 Projects Fund. The loan shall be repaid from authorized funds within
25 three years. Interest shall be at the rate of 0.20 percent per annum.
26

27 Section 3. The Director of Finance and Administration is
28 authorized to advance funds from the Water/Sewer Utility Fund to the
29 Capital Projects Fund as authorized by Section 2 of this Ordinance for
30 the purpose of the interfund loan. The Director of Finance and
31 Administration is authorized and directed to repay sums advanced from
32 monies received by the Capital Projects Fund, plus interest, as required
33 in Section 2.
34

35 Passed by majority vote of the Kirkland City Council in open
36 meeting this ____ day of _____, 2015.
37

38 Signed in authentication thereof this ____ day of _____,
39 2015.

MAYOR

Attest:

City Clerk

REAL PROPERTY PURCHASE AND SALE AGREEMENT

This Real Property Purchase and Sale Agreement (“Agreement”) is made this ____ day of _____, 2015 (“Effective Date”), by and between the City of Kirkland, a municipal corporation of the State of Washington (“Buyer”), and Houghton II, LLC (“Houghton II”), a limited liability company of the State of Washington, owner of a portion of the real property hereinafter described, and H. Douglas Waddell and Stacey Waddell (collectively “Waddell”), the owners of another portion of the property hereinafter described. Houghton II and Waddell are collectively referred to in this Agreement as “Seller.”

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

1. Purchase of Real Property. Seller and Buyer hereby agree to the purchase and sale of two contiguous parcels of real property described as follows (“Property”):

Tax Parcel No. 7882600431, commonly known as 6711 106th Avenue NE, Kirkland, Washington (“6711 Parcel”) and Tax Parcel No. 7882400432, commonly known as 6705 106th Avenue NE, Kirkland Washington (“6705 Parcel”).

The 6711 Parcel is legally described as follows:

PARCEL B, AS DELINEATED ON AND DESCRIBED IN KIRKLAND SHORT PLAT NUMBER 77-7-14 (JJ), RECORDED UNDER RECORDING NUMBER 7708220679, BEING A PORTION OF TRACT 43, SOUTH KIRKLAND ACREAGE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE 94, IN KING COUNTY, WASHINGTON;

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES OVER THE SOUTH 25 FEET OF THE EAST 138.25 FEET OF THE NORTH 273.08 FEET OF TRACT 43, SOUTH KIRKLAND ACREAGE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE 94, IN KING COUNTY, WASHINGTON.

The 6705 Parcel is legally described as follows:

A PORTION OF TRACT 43, SOUTH KIRKLAND ACREAGE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE 94, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT ON THE EAST LINE OF TRACT 43, A DISTANCE OF 273.08 FEET SOUTH OF THE NORTHEAST CORNER THEREOF;
THENCE WEST PARALLEL TO THE NORTH LINE OF SAID TRACT 137.6 FEET;
THENCE SOUTHWESTERLY TO A POINT 205.2 FEET WEST OF THE SOUTHEAST CORNER OF SAID TRACT 43;
THENCE EAST 209.2 FEET TO THE SOUTHEAST CORNER OF SAID TRACT;
THENCE NORTH ALONG THE EAST LINE OF SAID TRACT 253.42 FEET TO THE BEGINNING;
EXCEPT THE SOUTH 157.42 FEET THEREOF.

together with all of Seller's right, title and interest in all structures, fixtures, buildings and improvements situated on the Property (collectively, the "Improvements").

2. Purchase Price; Payment. The Purchase Price for the Property shall be Four Million Six Hundred Seventy Five Thousand and 00/100 Dollars (\$4,675,000.00). The Buyer shall deposit the Purchase Price with the Escrow Holder at or before Closing. Of the total Purchase Price, One Million Seven Hundred Thousand and 00/100 Dollars (\$1,700,000.00) is allocated to Houghton II, and the remaining Two Million Nine Hundred Seventy Five Thousand and 00/100 (\$2,975,000.00) is allocated to Waddell.

3. Earnest Money. Within two (2) Business Days of the Effective Date, Buyer will deliver to Chicago Title Insurance Company, 10500 NE 8th Street, Suite 600, Bellevue, Washington 98004 (the "Escrow Holder"), as escrow agent, One Hundred Thousand and 00/100 Dollars (\$100,000) by electronic wire transfer, as earnest money (the "Earnest Money"), which the Escrow Holder will deposit and hold in an interest bearing account. If Buyer does not timely deliver the Earnest Money as provided in this Section 3, or if the Escrow Holder is unable to immediately obtain the proceeds of the electronic wire transfer, then this Agreement shall be null and void, and neither party shall have any right or obligation hereunder. For the purpose of this Agreement, the term "Earnest Money" shall include any interest earned thereon. If the transaction contemplated by this Agreement is closed, then the Earnest Money will be applied in payment of the Sales Price to be paid at Closing. If the transaction is not closed, then the Escrow Holder will disburse the Earnest Money in accordance with the provisions of this Agreement.

4. Escrow Holder. Promptly following the execution of this Agreement, Buyer shall open an escrow with the Escrow Holder. A copy of this Agreement shall be provided to the Escrow Holder to advise the Escrow Holder of the terms and conditions hereof. Escrow Holder shall conduct the Closing pursuant to escrow instructions of the Parties which shall be consistent herewith.

5. Feasibility Contingency and Access. Buyer's obligations under this Agreement are conditioned upon Buyer's satisfaction in Buyer's sole discretion, concerning all aspects of the Property, including its physical condition; the presence of or absence of any hazardous substances; the contracts and leases affecting the Property; the potential financial performance of the Property; the availability of government permits and approvals; and the feasibility of the Property for Buyer's intended purpose. This Agreement shall terminate and Buyer shall receive a refund of the earnest money unless Buyer gives written notice to Seller within 30 days of the Effective Date stating that this condition is satisfied. If such notice is timely given, the feasibility contingency stated in this Section shall be deemed to be satisfied. As used in this Agreement, the term "Feasibility Period" shall mean the period beginning upon the Effective Date and ending upon the satisfaction or waiver of the feasibility contingency.

Seller shall make available for inspection by Buyer and its agents within 2 days after the Effective Date all documents in Seller's possession or control relating to the ownership, operation, renovation or development of the Property, excluding appraisals or other statements of value, and including: statements for real estate taxes, assessments, and utilities for the last three years and year to date; property management agreements and any other agreements with professionals or consultants; leases or other agreements relating to occupancy of all or a portion of the Property and a schedule of tenants, rents, prepaid rents, deposits and fees; plans, specifications, permits, applications, drawings, surveys, and studies; maintenance records, accounting records and audit reports for the last three years and year to date; and "Vendor Contracts" which shall include maintenance or service contracts, and installment purchase contracts or leases of personal property or fixtures used in connection with the Property. Buyer shall determine within the Feasibility Period: (i) whether Seller will agree to terminate any objectionable Vendor Contracts; and (ii) whether Seller will agree to pay any damages or penalties

resulting from the termination of objectionable Vendor Contracts. Buyer's waiver of the Feasibility Contingency shall be deemed Buyer's acceptance of all Vendor Contracts which Seller has not agreed in writing to terminate. Buyer shall be solely responsible for obtaining any required consents to such assumption and the payment of any assumption fees. Seller shall cooperate with Buyer's efforts to receive any such consents but shall not be required to incur any out-of-pocket expenses for doing so.

Seller shall permit Buyer and its agents, at Buyer's sole expense and risk to enter the Property at reasonable times subject to the rights of and after legal notice to tenants, to conduct inspections concerning the Property and improvements, including without limitation, the structural condition of improvements, hazardous materials, pest infestation, soil conditions, sensitive areas, wetlands or other matters affecting the feasibility of the Property for Buyer's intended use. Buyer shall schedule any entry onto the Property with Seller in advance and shall comply with Seller's reasonable requirements including those relating to security and confidentiality. Buyer shall not perform any invasive testing, including environmental inspections beyond a Phase I assessment, without obtaining Seller's prior written consent, which shall not be unreasonably withheld. Buyer shall be solely responsible for all costs of its inspections and feasibility analysis and has no authority to bind the Property for the purposes of statutory liens. Buyer agrees to indemnify and defend Seller from all liens, costs, claims and expenses, including attorneys' and experts' fees, arising from or relating to entry onto or inspection of the Property by Buyer and its agents. This Agreement to indemnify and defend Seller shall survive closing. Buyer may continue to enter the Property in accordance with the foregoing terms and conditions after removal or satisfaction of the feasibility contingency only for the purpose of leasing or to satisfy conditions of financing.

6. Disclosure Statement. Seller shall provide Buyer with a seller disclosure statement, to the extent required by Chapter RCW 64.06 within 5 days of the Effective Date.

7. Title Policy and Condition of Title. Seller authorizes Buyer or the Closing Agent, at Seller's expense, to apply for and deliver to Buyer a standard coverage owner's policy of title insurance. If an extended coverage owner's policy is specified, Buyer shall pay the increased costs associated with that policy including the excess premium over that charged for a standard coverage policy, and the cost of any survey required by the title insurer. The title report shall be issued by Chicago Title Insurance Company. Buyer shall notify Seller of any objectionable matters in the title report or any supplemental report within the earlier of 20 days after mutual acceptance of this Agreement or the expiration of the Feasibility Period. This Agreement shall terminate and Buyer shall receive a refund of the earnest money, less any costs advanced or committed for Buyer, unless within 10 days of Buyer's notice of such objections: (1) Seller agrees to remove all objectionable provisions; or (2) Buyer notifies Seller that Buyer waives any objections which Seller does not agree to remove. If any new title matters are disclosed in a supplemental title report, then the preceding termination, objection and waiver provisions shall apply to the new title matters except that Buyer's notice of objections must be delivered within 5 days of delivery of the supplemental report and Seller's response or Buyer's waiver must be delivered within 2 days of Buyer's notice of objections. The closing date shall be extended to the extent necessary to permit time for these notices. Buyer shall not be required to object to any mortgage or deed of trust liens, or the statutory lien for real property taxes, and the same shall not be deemed to be Permitted Exceptions; provided that the lien securing any financing which Buyer has agreed to assume shall be a permitted exception. Except for the foregoing, those provisions not objected to or for which Buyer waived its objections shall be referred to collectively as the "Permitted Exceptions." Seller shall cooperate with Buyer and the title company to clear objectionable title matters but shall not be required to incur any out-of-pocket expenses or liability other than payment of monetary encumbrances not assumed by Buyer and proration of any real property taxes, and Seller shall provide an owner's affidavit containing the information and reasonable covenants requested by the title company. The title policy

shall contain no exceptions other than the General Exclusions and Exceptions common to such policies and the Permitted Exceptions.

8. Closing. This sale shall be closed on or before April 24, 2015 ("Closing") by Chicago Title Insurance Company, 10500 NE 8th Street, Suite 600, Bellevue, Washington 98004 ("Closing Agent"). Buyer and Seller shall deposit with Closing Agent by noon on the scheduled closing date all instruments and monies required to complete the purchase in accordance with this Agreement. "Closing" shall be deemed to have occurred when the deed is recorded and the sale proceeds are available to Seller. Time is of the essence in the performance of this Agreement. This Agreement is intended to constitute escrow instructions to Closing Agent. Buyer and Seller will provide any supplemental instructions requested by Closing Agent provided that the same are consistent with this Agreement. Buyer is entitled to possession on closing. Buyer shall accept possession subject to all tenancies disclosed to Buyer during the Feasibility Period.

9. Closing Costs. Seller shall deliver any information reasonably requested by Closing Agent to allow Closing Agent to prepare a settlement statement for closing. Seller shall pay the premium for the owner's standard coverage title policy. Buyer shall pay the excess premium attributable endorsements requested by Buyer and the cost of any survey required in connection with the same. Seller and Buyer shall each pay one-half of the escrow fees. Real estate excise taxes shall be paid by Seller. Real and personal property taxes and assessments payable in the year of closing; collected rents on any existing tenancies; interest; utilities; and other operating expenses shall be pro-rated as of closing. Buyer shall pay to seller at closing an additional sum equal to any utility deposits for which Buyer receives the benefit after closing. Buyer shall pay all costs of financing including the premium for the lenders title policy. Buyer shall pay all sales or use tax applicable to the transfer of personal property included in the sale. Pursuant to RCW 60.80, Buyer and Seller request the Closing Agent to administer the disbursement of closing funds necessary to satisfy unpaid utility charges affecting the Property. The names and address of all utilities providing service to the Property and having lien rights are as follows are:

--City of Kirkland Utility Billing, 123 Fifth Avenue, Kirkland, WA 98033

--Puget Sound Energy, BOT-01H, P.O. Box 91269, Bellevue, WA 98009-9269

10. Post-Closing Adjustments, Collections and Payments. After closing, Buyer and Seller shall reconcile the actual amount of revenues or liabilities upon receipt or payment thereof to the extent those items were prorated or credited at Closing based on estimates. Any bills or invoices received by Buyer after Closing which relate to services rendered or goods delivered to the Seller or the Property prior to Closing which relate to services rendered or goods delivered to the Seller or the Property prior to Closing shall be paid by Seller upon presentation of such bill or invoice. Rents collected from each tenant after Closing shall be applied first to rentals due most recently from such tenant for the period after Closing, and the balance shall be applied for the benefit of Seller for delinquent rentals owed for a period prior to Closing. The amounts applied for the benefit of Seller shall be turned over by Buyer to Seller promptly after receipt. Seller shall be entitled to pursue any lawful methods of collection of delinquent rents but shall have no right to evict tenants after Closing.

11. Operations Prior to Closing. Prior to closing, Seller shall continue to operate the Property in the ordinary course of its business and maintain the Property in the same condition as existing on the Effective Date, but shall not be required to repair material damage from casualty except as otherwise provided in this Agreement. Seller shall not enter into or modify service contracts or other

agreements affecting the Property which have terms extending beyond closing without first obtaining Buyer's consent, which shall not be unreasonably withheld.

12. Condition of Property. Seller shall not enter into any lease, trust deed, mortgage, restriction, encumbrance, lien, license or other instrument or agreement affecting the Property without the prior written consent of Buyer from and after the date of this Agreement. Seller warrants as follows: that Seller is the sole legal owner of the fee simple interest in the Property and is not holding title as a nominee for any other person or entity; that no person or entity has a first right of refusal or option to purchase or other similar right to or interest in the property; that no labor, materials or services have been furnished in, on or about the property or any part thereof as a result of which any mechanics', laborers' or materialpersons' liens or claims might arise.

13. Seller's Representations. Except as disclosed to or known by Buyer prior to the satisfaction or waiver of the feasibility contingency stated above, including in the books, records and documents made available to Buyer, or in the title report or any supplemental report or documents referenced therein, Seller represents to Buyer that, to the best of Seller's actual knowledge, each of the following is true as of the date hereof (a) Seller is authorized to enter into the Agreement, to sell the Property. And to perform its obligations under this Agreement; (b) The books, records, leases, agreements and other items delivered to Buyer pursuant to this Agreement comprise all material documents in Seller's possession or control regarding the operation and condition of the Property; (c) Seller has not received any written notices that the Property or the business conducted thereon violate any applicable laws, regulations, codes or ordinances; (d) Seller has all certificates of occupancy, permits and other governmental consents necessary to own and operate the Property for its current use; (e) There is no pending or threatened litigation which would adversely affect the Property or Buyer's ownership thereof after closing; (f) There is no pending or threatened condemnation or similar proceedings affecting the Property, and the Property is not within the boundaries of any planned or authorized local improvement district; (g) Seller has paid (except to the extent prorated at closing) all local state and federal taxes (other than real and personal property taxes and assessments described above) attributable to the period prior to closing which, if not paid, could constitute a lien on the Property (including any personal property), or for which Buyer may be held liable after closing; (h) Seller is not aware of any concealed material defects in the Property except as disclosed to Buyer in writing during the Feasibility Period; (i) There are no Hazardous Substances (as defined below) currently located in, on, or under the Property in a manner or quantity that presently violates any Environmental Law (as defined below); there are no underground storage tanks located on the Property; and there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of Hazardous Substances or the violation of Environmental Law at the Property. As used in this Agreement, the term "Hazardous Substances" shall mean any substance or material now or hereafter defined or regulated as a hazardous substance, hazardous waste, toxic substance, pollutant, or contaminant under any federal, state, or local law, regulation or ordinance governing any substance that could cause actual or suspected harm to human health or the environment ("Environmental Law"). The term "Hazardous Substances" specifically includes, but is not limited to, petroleum, petroleum by-products and asbestos.

14. As-Is. Except for those representations and warranties specifically included in this Agreement; (i) Seller makes no representations or warranties regarding the Property; (ii) Seller hereby disclaims, and Buyer hereby waives, any and all representations or warranties of any kind, express or implied, concerning the Property or any portion thereof, as to its condition, value, compliance with laws, status of permits or approvals, existence or absence of hazardous material on site, occupancy rate or any other matter of similar or dissimilar nature relating in any way to the Property, including the warranties of fitness of a particular purpose, tenentability, habitability and use; (iii) Buyer otherwise takes the Property "As Is;" and (iv) Buyer represents and warrants to Seller that Buyer has sufficient experience

and expertise such that it is reasonable for Buyer to rely on its own pre-closing inspections and investigations.

15. Personal Property. This sale includes all right, title and interest of Seller to that portion of the personal property located on and used in connection with the Property, which Seller will itemize in an Exhibit to be attached to this Agreement within ten (10) days of the Effective Date. Seller warrants title to, but not the condition of, the personal property and shall convey it by bill of sale.

In addition to the leases and Vendor Contracts assumed by Buyer pursuant to Section 5 above, this sale includes all right, title and interest of Seller to the following intangible property now or hereafter existing with respect to the Property including without limitation: all rights-of-way, rights of ingress or egress or other interests in, on or to any land, highway, street, road or avenue, open or proposed, in, on or across, in front of, abutting or adjoining the Property; all rights to utilities serving the Property; all drawings, plans, specifications and other architectural or engineering work product; all governmental permits, certificates, licenses, authorizations and approvals; all rights, claims, causes of action, and warranties under contracts with contractors, engineers, architects, consultants or other parties associated with the Property; all utility, security and other deposits and reserve accounts made as security for the fulfillment of any of Seller's obligations; any name of or telephone numbers for the Property and related trademarks, service marks or trade dress; and guaranties, warranties or other assurances of performance received.

16. Casualty. Seller bears the risk of loss until closing, and thereafter Buyer shall bear the risk of loss. Buyer may terminate this Agreement and obtain a refund of the earnest money if improvements on the Property are destroyed or materially damaged by casualty before closing. Damage will be considered material if the cost of repair exceeds the lesser of \$100,000 or five percent of the purchase price stated in this Agreement. Alternatively, Buyer may elect to proceed with closing in which case at closing Seller shall assign to Buyer all claims and right to proceeds under any property insurance policy and shall credit to Buyer at closing the amount of any deductible provided for in the policy.

17. FIRPTA—Tax Withholding at Closing. Closing Agent is instructed to prepare a certification that Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act. Seller agrees to sign this certification.

18. Conveyance. Title shall be conveyed by a Statutory Warranty Deed subject only to the Permitted Exceptions.

19. No Agents or Brokers. Buyer and Seller represent to the other that they have not authorized any broker or finder to act on their behalf in connection with the sale and purchase under this Agreement and that they have not dealt with any broker or finder purporting to act on behalf of any other party. Buyer and Seller each hereby agree to indemnify, defend, and hold the other harmless from any claim, liability, obligation, cost, or expense (including attorneys' fees and expenses) for fees or commissions relating to Buyer's acquisition of the Property asserted against either party by any broker or other person claiming by, through, or under the indemnifying party or whose claim is based on the indemnifying party's acts. The provisions of this Section 19 shall survive the Closing or any termination of this Agreement.

20. Assignment. Buyer may not assign this Agreement or Buyer's rights under this Agreement.

21. Right of First Refusal. In the event Buyer sells either or both of the 6705 Parcel and the 6711 Parcel on the Multiple Listing Service or in a publicly and competitively bid sale process, Waddell shall have a right of first refusal on sale; provided, however, that there shall be no right of first refusal for any sale by Buyer to another public or non-profit entity or for any public purpose, including but not limited to provision of affordable housing. The Parties will enter into a written right of first refusal agreement prior to Closing. Any right of first refusal shall automatically expire three years after Closing.

22. Section 1031 or 1033 Like-Kind Exchange. If Seller intends for this transaction to be part of a Section 1031 or 1033 like-kind exchange, then Buyer agrees to cooperate in the completion of the like-kind exchange so long as the Buyer incurs no additional liability in doing so, and so long as any expenses (including attorney's fees and costs) incurred by the Buyer that are related to only the exchange are paid or reimbursed to the cooperating party at or prior to Closing. Notwithstanding Section 20 of this Agreement, Seller may assign this Agreement to its qualified intermediary or any entity set up for the purposes of completing a reverse exchange.

23. Remedies. In the event Buyer fails, without legal excuse, to complete the purchase of the Property, then Seller may terminate this Agreement and keep the earnest money as liquidated damages as the sole and exclusive remedy available to Seller for such failure. In the event Seller fails, without legal excuse, to complete the sale of the Property, then, as Buyer's sole remedy, Buyer may either (a) terminate this Agreement and recover all earnest money or fees made by Buyer whether or not the same are identified as refundable or applicable to the purchase price; or (b) bring suit to specifically enforce this Agreement and recover incidental damages provided Buyer must file suit within 60 days of the scheduled date of closing or any earlier date Seller has informed Buyer in writing that Seller will not proceed with Closing.

24. Information Transfer. In the event this Agreement is terminated, Buyer agrees to deliver to Seller within 10 days of Seller's written request, copies of all materials received from Seller and any non-privileged plans, studies, reports inspections, appraisals, surveys, drawings, permits application or other development work product relating to the Property in Buyer's possession or control as of the date this Agreement is terminated.

25. Binding. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto and shall inure to the benefit of them. This Agreement and any addenda and exhibits to it state the entire understanding of the Buyer and Seller regarding the sale of the Property. There are no verbal or other written agreements which modify or affect this Agreement.

26. Counterparts. The parties may execute this Agreement in one or more identical counterparts, all of which when taken together will constitute one and the same instrument. A facsimile or electronic mail transmission shall be binding on the party or parties whose signatures appear thereon. If so executed, each counterpart is to be deemed an original for all purposes, and all counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart. Electronic delivery of documents (such as fax or email) shall be legally sufficient to bind the party the same as delivery of an original.

EXECUTED to be effective as of the date listed above.

H. Douglas Waddell (Seller)

Stacey Waddell (Seller)

HOUGHTON II, LLC (SELLER)

By: _____
Print Name: _____
Its _____

CITY OF KIRKLAND (BUYER)

By: _____
Print Name: _____
Its: _____

Approved as to form:

Assistant City Attorney