



## **CITY OF KIRKLAND**

City Attorney's Office

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### **MEMORANDUM**

**To:** Marilynne Beard, Interim City Manager

**From:** Oskar Rey, Assistant City Attorney

**Date:** May 24, 2010

**Subject:** Proposed Purchase of Real Property—11830 – 120<sup>th</sup> Avenue NE

### **RECOMMENDATION:**

The City Council authorize the Interim City Manager to enter into a Purchase and Sale Agreement for acquisition of the property commonly known as 11831 – 120<sup>th</sup> Avenue NE, Kirkland, Washington ("Property").

### **BACKGROUND:**

The City entered into a non-binding Letter of Intent with the seller of the Property on May 6, 2010. The Letter of Intent established a 30 day period for negotiation of a Purchase and Sale agreement between the parties. City staff and its commercial real estate broker have been negotiating a draft Purchase and Sale Agreement with the Seller and its real estate broker. City staff anticipates that the draft agreement will be finalized in the next few days and staff will provide copies of the agreement to the Council as soon as it is ready. City staff further anticipates that it will recommend that the Council authorize the City Manager to enter into the Purchase and Sale Agreement on behalf of the City.

Upon signing of the Purchase and Sale Agreement, a 60 day feasibility period will begin. The purpose of the feasibility period is to allow the City to conduct "due diligence" with respect to the property and the structures on the property. If the City successfully completes the due diligence process and still desires to purchase the property the parties would have an additional 30 days in which to close the transaction.

A copy of the Letter of Intent, which sets forth the basic parameters of the proposed transaction, is attached to this memo. If necessary, staff can make a more detailed presentation at the June 1, 2010 City Council Meeting, based on the finalized Purchase and Sale Agreement. In addition, this proposed acquisition can be discussed during the Study Session portion of the June 1, 2010 meeting, which relates to City Hall facility planning.



CB RICHARD ELLIS

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May 4, 2010

Susie Detmer  
Steven Brunette  
Cushman & Wakefield - Commerce  
1420 5th Avenue, Ste 2900  
Seattle, WA 98101

**RE: LETTER OF INTENT TO PURCHASE  
Former Costco Home Store  
11831 120th Avenue NE  
Kirkland, WA**

Dear Susie & Steven:

Please accept this proposal on behalf of the City of Kirkland, hereinafter referred to as "Buyer," to enter into a Real Estate Purchase and Sale Agreement ("Agreement") on the subject property mutually acceptable to both parties.

1. Buyer. City of Kirkland
2. Property. The subject property known as the Former Costco Home Store and current My Home Wholesale, consisting of approximately 102,442 rentable square feet, together with all fixtures and personal property owned by Seller and located on the Property. The physical address is 11831 120th Avenue NE Kirkland, WA and the parcel number is 620930-0010-08.
3. Purchase Price and Payment. The total purchase price for the property is Ten Million Six Hundred Thousand and No/100 Dollars (\$10,600,000) paid all cash at closing.
4. Deposit. Upon execution of the Agreement, Buyer will make an earnest money deposit in the form of a Promissory Note in the amount of Two Hundred and Fifty Thousand and No/100 Dollars (\$250,000) to be converted to cash under conditions outlined in Section 5.b herein.
5. Feasibility Period. Buyer shall be allowed Sixty (60) days from mutual execution of the Agreement to complete, to its own satisfaction, a feasibility analysis of the subject property which will include, but not limited to, the Buyer's review of the following:
  - a. Within Seven (7) days of the date of execution of the Agreement by both parties, Seller shall deliver to Buyer the documents listed below *as is in their possession*
    1. A current legal description of the Property.
    2. An existing ALTA survey, if available
    3. Copy of Tenants Lease

*M. Blaud*  
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*as is in their  
possession*

4. Copies of all monthly operating statements for the Property for the past 3 years, certified as accurate by Seller, setting forth all income and expenses.
5. Copies of utility bills
6. Copies of the service agreements and other agreements pursuant to the Property.
7. Phase I Environmental Assessment, if available.
8. Copy of current years real estate tax bill
9. Building plans, if available
10. List of capital improvements for the last 5 years
11. Copies of Certificates of Occupancy, if available
12. Soils report.
13. Structural Drawings, if available.
14. Copy of documentation regarding existing encumbrances on the property.
15. Tax assessments and notices.
16. Title Report, if available.

- b. Buyer must notify Seller in writing within the Sixty (60) day Feasibility Period of its approval of the specified documents and of its satisfactory determination of project feasibility. Additionally, Buyer must notify Seller of its intent to close upon the terms and times so designated in this Letter. If Buyer elects to continue with this transaction, the deposit held by Buyer will be deposited with Escrow in the form of cash. The deposit will be applied and credited toward the purchase price and will become non-refundable. If Buyer terminates this transaction during the Feasibility Period or fails to notify Seller of its intent to close, the Promissory Note will be returned to Buyer and the Agreement will become null and void and Buyer will return all materials related to this transaction to Seller or its agent.

6. Title. Seller will provide Buyer with a preliminary commitment for title insurance, along with copies of all documentation referred to therein within five (5) days after mutual execution of the Agreement. Buyer will have fifteen (15) days after receipt of the preliminary commitment to review the commitment and documentation. Buyer will provide written notice to Seller within said fifteen (15) days of its approval, or in the event of disapproval, of the items disapproved. Seller would have ten (10) days to advise Buyer of its intent to remove items disapproved by Buyer, or to convey title subject to those items. Buyer may elect to waive its objections or terminate the Agreement.

Title will be conveyed by statutory warranty deed, free and clear of all encumbrances and defects (including all assessments levied and of record at closing) except those accepted by Buyer. An extended form Owner's policy of title insurance will be issued by a title company acceptable to Buyer and paid by Seller at closing. Seller to pay all closing costs, except that Buyer will pay one-half (1/2) of any escrow fee.

7. Right of Entry. Buyer may enter onto the subject property during the term of the Feasibility Period for the purpose of conducting its analyses. Buyer will hold Seller harmless from any liens which might arise from such activities.

8. Survey. Within thirty (30) days of the execution of the Agreement, Seller will, *if they so passes,* submit for approval to Buyer a metes and bounds legal description and ALTA survey from a

licensed surveyor on the subject property showing boundary line, dimensions, setback lines, utilities, easements, and encroachments.

9. Sale/Lease Disclosures. To the best of Seller's knowledge, Seller represents and warrants to Buyer that there are no hazardous materials in, on, or around the property. Seller shall provide any and all information regarding: the existence or nonexistence of asbestos, PCB transformers, any other toxic, hazardous or contaminated substances, and underground storage tanks; structural, mechanical and soil conditions; flood zoning; and compliance with the Americans with Disabilities Act (ADA) and the Residential Lead Paint Hazard Reduction Act. Attached is the Sale/Lease Disclosures Form for review. (Double click on icon to review and print attachment.)



11831 120th Ave  
NE.doc

10. Seller Cooperation. Seller shall cooperate with Buyer in the satisfaction or removal of contingencies to closing. Such cooperation shall include execution of all applications, lot line adjustments, plans or other required submissions, as well as support of all matters with any public or private agency.

11. Liquidated Damages. In the event of Buyer's breach of the Agreement or failure to perform its obligations under the Agreement, Seller's exclusive remedy shall be receipt of the funds deposited by Buyer described in Section 4 hereof.

12. Closing. The closing of this transaction will be Thirty (30) days from the removal of contingencies or sooner at Buyer's option.

13. Escrow Holder. Escrow to be held with Old Republic Title & Escrow.

14. Agency Disclosure. Cushman & Wakefield - Commerce represents the Seller and CB Richard Ellis represents the Buyer in this transaction. In accordance with Washington State Law, attached is the "The Law of Real Estate Agency" pamphlet for review. (Double click on icon to view and print attachment.)



"AGENCY  
PAMPHLET(CBA) 7-pi

15. Commission. Seller will pay a commission at closing in the amount of two percent (2%) of the gross sales price to CB Richard Ellis. Said Commission shall be payable as of the date the sale closes and shall be paid out of escrow.

16. Binding Effect. With the exception of Section 16 below, it is understood that this proposal is non-binding and is intended solely and exclusively as a preliminary expression of general intentions. The parties mutually intend that neither shall have any binding contractual obligations to the other with respect to the matters referred to herein unless and until a formal written Agreement has been prepared with adequate opportunity for review by legal counsel and has been fully executed and delivered by the parties.

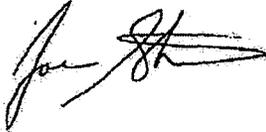
17. Exclusivity. During the thirty (30) day period Seller and Buyer are negotiating and documenting this Agreement, Seller covenants and agrees that it will refrain from soliciting or accepting offers for the property from any person other than Buyer.

18. Acceptance. Seller shall have until 5:00 p.m. on Thursday May 6<sup>th</sup>, 2010 to accept this proposal, and so indicate that by signing both original copies of this letter and returning one to the Buyer. In the event of Seller's acceptance, Buyer shall proceed with the preparation of the Agreement which must be executed by both parties within Ten (10) days after Seller's acceptance of this proposal.

This letter/proposal is intended solely as a preliminary expression of general intentions and is to be used for discussion purposes only. The parties intend that neither shall have any contractual obligations to the other with respect to the matters referred herein unless and until a definitive agreement has been fully executed and delivered by the parties. The parties agree that this letter/proposal is not intended to create any agreement or obligation by either party to negotiate a definitive lease/purchase and sale agreement and imposes no duty whatsoever on either party to continue negotiations, including without limitation any obligation to negotiate in good faith or in any way other than at arm's length. Prior to delivery of a definitive executed agreement, and without any liability to the other party, either party may (1) propose different terms from those summarized herein, (2) enter into negotiations with other parties and/or (3) unilaterally terminate all negotiations with the other party hereto.

Sincerely,

CB RICHARD ELLIS



Joe Steele  
Senior Vice President  
(425) 462-6925



Brian Biege  
Associate  
(425) 462-6914

cc: Donna Burris (Buyer), w/attachments

**ACCEPTED AND AGREED:**

this 6<sup>th</sup> day of MAY, 2010.

**BUYER**

City of Kirkland  
By: Marilynne Beard

Its: City Manager

**SELLER**

By: [Signature]

Its: CHIEF OPERATING OFFICER