

## REAL ESTATE PURCHASE AND SALE AGREEMENT

**THIS REAL ESTATE PURCHASE AND SALE AGREEMENT** ("Agreement") is made and entered into as of \_\_\_\_\_, 2007, by and between **KING COUNTY**, a municipal corporation and political subdivision of the State of Washington (the "Seller") and **NORTH LOT DEVELOPMENT, L.L.C.**, a Delaware limited liability company (the "Buyer").

### RECITALS

**A.** Seller owns that certain real property located in the City of Seattle, County of King, State of Washington, which consists of approximately 167,504 square feet, or 3.85 acres, the legal description of which is attached hereto as **EXHIBIT A** (the "Property").

**B.** Seller is desirous of selling the Property and Buyer is desirous of purchasing the Property.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the promises and mutual covenants contained herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

### ARTICLE 1. PURCHASE AND TRANSFER OF ASSETS

**1.1. PROPERTY TO BE SOLD.** Subject to and upon the terms and conditions set forth in this Agreement, Seller shall sell, convey, assign, transfer and deliver to Buyer on the Closing Date (as hereinafter defined in Section 10.1 of this Agreement) and Buyer shall buy, assume and accept from Seller on the Closing Date the following assets and properties:

**1.1.1.** the Property;

**1.1.2.** all of the improvements and structures located on the Property, if any;

**1.1.3.** all of Seller's right, title and interest in and to tangible personal property, if any, owned by the Seller and attached, appurtenant to or used in connection with the Property ("Personal Property");

**1.1.4.** all of Seller's tenements, hereditaments, easements and rights appurtenant to the Property including but not limited to, all of the Seller's right, title, and interest in and to

streets, alleys or other public ways adjacent to the Property, easements for public utilities, all sewers and service drainage easements, all rights of connection to the sewers, and all rights of ingress and egress, and all leases, licenses, government approvals and permits affecting the Property, except as reserved in Section 4.4 of this Agreement.

Hereinafter, the items listed in Section 1.1 are collectively referred to as the "Purchased Assets."

## ARTICLE 2. PURCHASE PRICE

**2.1. PURCHASE PRICE AND PAYMENT.** In consideration of the sale, transfer, conveyance, assignment and delivery of the Purchased Assets, Buyer shall, in full payment therefore, pay to Seller on the Closing Date a total purchase price of **Ten Million One Hundred and Ten Thousand Dollars and Zero Cents (\$10,110,000.00)** (the "Purchase Price").

**2.2. ALLOCATION OF PURCHASE PRICE.** Seller and Buyer agree that the entire Purchase Price is allocable to real property and that the value of the Seller's Personal Property, if any, is *de minimis*.

**2.3. EARNEST MONEY.** Not later than five (5) days following the Date of this Agreement, Buyer shall deposit with Escrow Agent (defined in Section 10.2 below) a promissory note ("Note") in the sum of Five Hundred Thousand Dollars (\$500,000.00) as the initial earnest money deposit (the "Earnest Money") in the form attached hereto as **EXHIBIT B**. The Earnest Money Note shall be replaced with cash within three (3) business days after the earlier of the end of the Due Diligence Period or upon notification by Buyer that Buyer has removed Buyer's Contingencies. The Earnest Money, once converted to cash, will be deposited into an interest bearing escrow account by the Escrow Agent at a financial institution approved by Buyer, and all interest accruing thereon shall become a part of the Earnest Money. Except as provided in Section 4.1.5, Earnest Money shall become non-refundable after all Contingencies hereinafter described are satisfied or waived by the parties during the Due Diligence Period (as the same may be extended). Upon closing of this transaction, the Earnest Money shall be credited against the Purchase Price.

## ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

**3.1. WARRANTIES AND REPRESENTATIONS OF SELLER.** Seller represents and warrants as follows:

**3.1.1. Definition of Seller.** The Seller is a municipal corporation and subdivision of the State of Washington duly organized, validly existing and in good standing under the laws of the State of Washington. Seller has all requisite corporate power and authority

to carry on its business as it is now being conducted in the place where such businesses are now conducted.

**3.1.2. Execution, Delivery and Performance of Agreement, Authority.** The execution, delivery and performance of this Agreement by Seller (i) is within the powers of Seller as a municipal corporation, (ii) has been or will be on or before the Closing Date, duly authorized by all necessary action of the Seller's legislative authority, and (iii) does not and will not violate any provision of any law, rule, regulation, order, writ, judgment, decree, agreement or award to which the Seller is a party to or which is presently in effect and applicable to Seller. This Agreement constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with the terms thereof.

**3.1.3. Assessments.** There is no pending, or to the best of Seller's knowledge, contemplated local improvement district or other special assessment or charge with respect to the Property, except as may be disclosed in the Title Commitment described in Section 4.1 of this Agreement.

**3.1.4. Full Disclosure.** No representation or warranty by Seller in this Agreement or in any instrument, certificate or statement furnished to Buyer pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or fail to state a material fact which is necessary to make the statements set forth therein not false or misleading.

**3.1.5. No Broker.** No broker, finder, agent or similar intermediary has acted for or on behalf of Seller in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent or similar intermediary is entitled to any broker's, finder's or similar fee or commission in connection with this Agreement based on an agreement, arrangement or understanding with Seller or any action taken by Seller.

**3.1.6. Contracts.** There are no contracts or other obligations outstanding for the sale, exchange, transfer, lease, rental or use of the Property or any portion thereof.

**3.1.7. Future Agreements.** From and after the date hereof, except as set forth herein or unless this Agreement is terminated in accordance with its terms, Seller shall not, without the prior written consent of Buyer, which shall not be unreasonably withheld, delayed or conditioned, enter into any agreement, contract, commitment, lease or other transaction that affects the Property in any way. Seller is authorized to enter into and execute amendments to the legal descriptions for the Weller Street Bridge Pedestrian Easement, which was recorded under recording number 20061201000126 on 12/01/2006.

**3.1.8. Claims.** Except as disclosed in writing to Buyer, Seller has not received and Seller has no knowledge of any pending or threatened claims or lawsuits affecting or

concerning the Property or that could adversely affect Seller's ability to complete the sale contemplated by this Agreement;

**3.1.9. Violations of Law.** Seller has received no written notice of, and it has no knowledge of, any violation of any applicable zoning regulation, ordinance or law (including environmental laws) affecting or relating to the use, condition, or occupancy of the Property.

**3.1.10. Foreign Person.** Seller is not a foreign person and is a "United States Person" as such term is defined in Section 7701 (a) (30) of the Internal Revenue Code of 1986, as amended (the "Code") and shall deliver to Buyer prior to the Closing Date, an affidavit, as set forth in **EXHIBIT C (Certificate of Non-Foreign Status)**, evidencing such fact, and such other documents as may be required under the Code.

**3.1.11. Seller's Knowledge.** Any and all representations or warranties based on Seller's knowledge are made to and limited by the present, actual knowledge of Bob Thompson, who is an employee of King County, and is the Program Manager, Inventory and Sales of the Real Estate Service Section. Bob Thompson has made no inquiries or investigations with respect to Seller's representations and warranties prior to the making thereof and has no duty to undertake the same.

**3.1.12. Stadium Agreements and Claim.** Seller and Buyer acknowledge the existence of a series of agreements relating to the conveyance to the Washington State Public Stadium Authority ("PSA") by Seller of the land upon which the Qwest Field and Exhibition Center and associated facilities ("Stadium and Exhibition Center") are located, and the retention by Seller of the Property ("Stadium Agreements"), and the related potential claim of the PSA to the Property or against conveyance of the Property by Seller under RCW ch. 36.102 ("Stadium Claim"). The Stadium Agreements are the Agreement and Letter of Intent, dated June 25, 1998, the Agreement on Stadium and Exhibition Center Property Contributions and Reservations of Possessory rights dated September 30, 1998, the Special Use Agreement dated December 11, 1998, the General Assignment of the Special Use Agreement dated April 16, 1999, the First Amendment to Special Use Agreement and Assignment of First Amendment dated January 26, 2000, the Option Agreement for the North Half of the North Lot fully executed as of March 16, 2000, the Memorandum of Option for the North Half of the North Lot dated May 19, 2000, the Statutory Warranty Deed granted by King County to the Washington State Public Stadium Authority dated March 15, 2000, and all documents specifically referenced within these agreements. All matters related to or arising from the Stadium Agreements and Stadium Claim are excluded from the coverage of the representations and warranties of Seller in Sections 3.1.1 through 3.1.11.

**3.2. REPRESENTATIONS AND WARRANTIES OF BUYER.** Buyer represents and warrants as follows:

**3.2.1. Organization.** Buyer is a Delaware limited liability company, validly

existing and qualified to do business in the State of Washington. The members of Buyer are Opus Northwest, L.L.C., a Delaware limited liability company, and Nitze-Stagen & Co., Inc., a Washington corporation. Buyer is currently, and will remain until the Project, as defined herein, is completed, financially able to perform all obligations set forth in this Agreement. Buyer has all requisite entity power and authority to purchase the Property and perform its obligations hereunder.

**3.2.2. Execution, Delivery and Performance of Agreement, Authority.** The execution, delivery and performance of this Agreement by Buyer (i) is within the powers of Buyer as a Delaware limited liability company, (ii) has been or will be on or before the Closing Date, duly authorized by all necessary action of the Buyer, and (iii) does not and will not violate any provision of any law, rule, regulation, order, writ, judgment, decree or award to which the Buyer is a party to or which is presently in effect and applicable to Buyer. This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with the terms hereof.

**3.2.3. Full Disclosure.** No representation or warranty by Buyer in this Agreement or in any instrument, document, certificate or statement furnished to Seller pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or fail to state a material fact which is necessary to make the statements set forth therein not false or misleading.

**3.2.4. No Broker.** No broker, finder, agent or similar intermediary has acted for or on behalf of Buyer in connection with this Agreement or the transactions contemplated hereby, and no broker, finder, agent, or similar intermediary is entitled to any broker's, finder's or similar fee or commission in connection with this Agreement based on an agreement, arrangement, or understanding with the Buyer or any action taken by the Buyer.

#### **ARTICLE 4. TITLE MATTERS**

**4.1. TITLE.** Seller shall deliver to Buyer good and marketable title, free and clear of all liens, defects and encumbrances except for the Reserved Easements (as described in Section 4.4 of this Agreement), Covenants (as described in Section 4.5 of this Agreement) and Permitted Exceptions (as described in Section 4.1.3 - 4.1.5 of this Agreement).

**4.1.1. Title Commitment.** Buyer shall obtain a current ALTA form of commitment for an owner's policy of title insurance (the "Title Commitment") issued by First American Title Insurance Company (the "Title Company"), describing the Property, listing Buyer as the prospective named insured and showing as the policy amount the total purchase price for the Property, and shall have a copy of such Title Commitment with legible copies of all documents listed therein delivered by the Title Company to Seller.

**4.1.2. Survey.** Buyer shall have the option, at its expense, to have prepared and furnished to the Title Company, Buyer and Seller a survey (the "Survey") of the Property prepared by a licensed public surveyor.

**4.1.3. Review of Title Commitment and Survey.**

a. Buyer shall have until one hundred and twenty (120) days from the date this Agreement is fully executed by the parties (the "Review Period") in which to notify Seller of any objections Buyer has to any matters shown or referred to in a Title Commitment or Survey, if any has been obtained by Buyer. Any exceptions or other items that are set forth in the Title Commitment or the Survey and to which Buyer does not object within the Review Period shall be deemed to be permitted exceptions ("Permitted Exceptions"). With regard to items to which Buyer does object within the Review Period, Seller shall notify Buyer within ten (10) days after Seller receives Buyer's notice of objections of any exceptions to the title or items on the Survey which Seller is not willing or able to remove or otherwise resolve, and Buyer may, at Buyer's option, either waive the objections not cured or Buyer may terminate this Agreement by written notice to Seller. Notwithstanding the foregoing, all monetary liens or encumbrances shall be paid by Seller at Closing.

b. Seller and Buyer specifically acknowledge that the existing easement in favor of Seattle City Light, which was recorded under recording number 19990811000621 on August 11, 1999, may create problems for the Project (as hereafter defined in Section 4.5.1), and that the Parties will cooperate in good faith to determine whether an adjustment to this easement may be obtained in order to better accommodate the Project.

**4.1.4. Stadium Agreements and Stadium Claim.** Notwithstanding the process set forth in Section 4.1.3, Buyer shall have the opportunity, until it removes Buyer's Contingencies under Section 5.1, to evaluate the Stadium Agreements and Stadium Claim referenced in Section 3.1.12 as part of Buyer's due diligence. Upon removal of Buyer's Contingencies, Buyer agrees that the Stadium Agreements and Stadium Claim shall be Permitted Exceptions. Further, upon removal of Buyer's Contingencies, Seller shall thereafter have no liability to Buyer for, and Buyer shall have no recourse against Seller and will waive any claims for, all matters related to or arising from the Stadium Agreements and Stadium Claim. Seller and Buyer agree that compliance with the terms of this Agreement will be deemed by Seller and Buyer to satisfy the obligations of Seller and Buyer under the terms of the Stadium Agreements. Further, Seller has concluded that the Property is not necessary as part of a site for the stadium and exhibition center as that term is defined in RCW 36.102.010, and the County Legislative Authority will make a finding to that effect in any Ordinance approving this Agreement.

**4.1.5. Challenge to Conveyance** If a lawsuit is filed at any time against Seller or Buyer or both Seller and Buyer challenging the conveyance contemplated by this Agreement on any grounds, then each named Party shall vigorously defend the ability of the Parties to carry out the terms of this Agreement and the Project contemplated herein and each Party shall

cooperate with the other in such defense. Seller shall not, however, be required to vigorously defend such a lawsuit to the extent the subject matter of the lawsuit arises from Buyer's failure to comply with the terms of this Agreement and the Deed (if conveyance has occurred), and Seller may seek any remedies available under this Agreement for such failure to comply. If a lawsuit as described in this Section 4.1.5 is filed and a Court enters an order, judgment, or injunction that permanently prohibits or voids the conveyance contemplated by this Agreement and any applicable appeal period has expired without an appeal being filed, then either Party may terminate this Agreement and neither party shall have any further rights or obligations to the other, except that Buyer shall be entitled to a refund of any money paid to Seller prior to such termination, except for any non-refundable extension payment under Section 5.3 of this Agreement for an extension that moved Closing beyond June 30, 2008. Provided, however, that if there is an appeal of such order, judgment, or injunction then each named Party shall continue to vigorously defend and cooperate in the manner required in this Section 4.1.5 prior to such appeal, and the decision to terminate this Agreement must be mutual. All deadlines hereunder shall be extended pending any such appeal and the parties agree to enter into good faith renegotiations of the terms of this Agreement based on the outcome of such appeal. If such lawsuit is filed and a Court temporarily enjoins the conveyance contemplated by this Agreement prior to Closing, then the deadlines for performance under this Agreement shall be extended for the same number of days the temporary injunction is in effect. This Section shall apply notwithstanding the representations and warranties of the Parties in Article 3 of this Agreement, and the non-refundable nature of extension payments described in Section 5.3 of this Agreement. The provisions of this Section 4.1.5 shall also be a Permitted Exception.

**4.2. OWNER'S TITLE INSURANCE POLICY.** At the closing, Buyer shall receive an extended coverage owner's policy of title insurance to be issued by the Title Company in the full amount of the purchase price, effective as of the Closing Date, insuring Buyer that the fee simple title to the Property is vested in Buyer, subject only to the usual printed exceptions contained in such title insurance policy, to the Permitted Exceptions and such easements and covenants as are agreed to by the Parties as provided by Sections 4.4 and 4.5 of this Agreement and attached to the Deed, and to any other matters approved in writing by Buyer.

**4.3. CONVEYANCE.** Seller shall convey to Buyer the title to the Property by Statutory Warranty Deed ("Deed"), subject to the Permitted Exceptions and such easements and covenants as are agreed to by the Parties as provided by Sections 4.4 and 4.5 of this Agreement.

**4.4. RESERVED EASEMENTS.** Seller shall reserve the following easements in the Deed (as defined in Section 4.3 herein):

**4.4.1. Transit Easements.** Seller shall reserve Transit Easements for bus ingress, egress and through travel and for temporary bus stops on the Second and Third Avenue Extensions on the Property sufficient in scope to allow solely for occasional and short term use, such as that in conjunction with special event service associated with Qwest Field and the Exhibition Center, when use of other nearby streets is not reasonably

available or permitted. In preparing the Transit Easements as required by Section 5.4 of this Agreement, Buyer and Seller shall coordinate with one another to identify the appropriate locations and dimensions of the Transit Easements, which locations and dimensions shall be sufficient to allow the uses authorized by the Transit Easements.

**4.4.2. Odor Control Facility Easements.** Seller shall reserve an Odor Control Facility Access and Maintenance Easement that will allow access to the Stationmaster's Garden along the Third Avenue Extension and maintenance activities in the portion of the Third Avenue Extension near the Stationmaster's Garden. Seller shall also reserve an Odor Control Facility Utility easement for the installation, operation and maintenance of an underground utility connection within the Third Avenue Extension between King Street and the Stationmasters Garden, and between the Stationmasters Garden and the Weller Street Bridge in the location of the City Light easement in that area. If Closing occurs before December 31, 2007, Seller may also reserve a temporary construction easement over a portion of the Property that will terminate on December 31, 2007.

**4.4.3. Fiber Optic Line Easement.** Seller shall reserve a Fiber Optic Line Easement that will authorize the installation, operation, maintenance, repair and replacement of the existing underground Fiber Optic Line in the Third Avenue Extension in its current location or an alternative location to be agreed to by the Parties. In preparing the Fiber Optic Line Easement as required by Section 5.4 of this Agreement, Buyer and Seller shall coordinate with one another to identify the appropriate locations and dimensions of the Easement, which locations and dimensions shall be sufficient to allow the uses authorized by the Fiber Optic Line Easement.

**4.5. COVENANTS.** The Deed (as defined in Section 4.3 herein) shall include the following restrictive covenants, which covenants shall run with the land for the sole benefit of the County and the County's significant interests in land, both fee and easement adjacent to and in the vicinity of the Property. Seller and Buyer agree that the County and its successors in interest shall have standing to enforce these covenants. The covenants shall be enforced with the remedies set forth in Section 12.4 of this Agreement. Buyer and Seller further agree that these covenants may also be enforced by the Parties hereto as a matter of contract through this Agreement, and that these covenants shall be binding obligations on Buyer when this Agreement is fully executed.

Buyer and Seller further agree and declare that the covenants and conditions contained herein shall bind and the benefits shall inure to, respectively, the Buyer and its successors and assigns and all subsequent owners of any portion of the Property or the Project, and to Seller and its successors and assigns, subject to expiration, termination, and modification thereof as specifically provided below. Each and every contract, deed or other instrument hereafter executed conveying any portion or interest in the Property or the Project, including any interest under the Washington Condominium Act, Ch. 64.32 RCW, shall contain an express provision



making such conveyance subject to any covenants and conditions of this Agreement which are then still in effect, provided however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants and conditions, regardless of whether or not such covenants and conditions are set forth or incorporated by reference in such contract, deed or other instrument. It is declared and agreed in particular that if any condominium is created in any portion of the Property or Project, the Deed and the then applicable covenants shall be attached and incorporated as conditions to the declaration, master lease, or other document creating the condominiums, and to any condominium association by-laws.

Upon satisfaction of any covenant herein Seller shall execute and record a document to memorialize such satisfaction in a form proposed by Buyer and approved by Seller, which approval shall not be unreasonably conditioned, delayed or withheld.

**4.5.1. Development Scope.** Buyer shall covenant that the development (the "Project") of the Property shall consist of the design, construction, operation and maintenance of a mixed-use development with housing as specified herein, and community friendly, ground level retail, row houses and shops, and, if determined by the Buyer, in the exercise of its best business judgment, to be economically feasible, the provision of a full service food market. All commercial and retail spaces will be designed and constructed to meet LEED Certification. This covenant shall expire upon the completion of the construction of the Project in a manner consistent with the requirements of this Agreement, including without limitation, the development schedule requirements in Section 4.5.11 of this Agreement.

**4.5.2. Housing.** Buyer shall covenant that the development shall include at least 350,000 gross square feet of housing, not including parking, for multiple income levels and family sizes and include a minimum of 400 housing units, of which a minimum of 200 housing units shall be ownership units. Sixty percent of the development's gross square footage allowable under current zoning, height limits imposed by the Stadium View Corridor in Section 4.5.7 of this Agreement and any easements existing at the time this Agreement is entered into, not including parking, must be housing. If the gross square footage of the development is increased, because of a change in zoning to allow for an increase in the height of buildings within the development, and if Buyer concludes that it is inappropriate to extend the sixty percent housing requirement to the larger development, based on information gained about the site during Buyer's development feasibility analysis, Buyer may present this information to Seller and the City of Seattle and develop the property pursuant to an alternative development plan as to the percentage of the development that must be housing only, provided that such alternative development plan is approved by the King County Executive, following approval by ordinance of the King County Council, and the Mayor of the City of Seattle. All housing units in the development must meet either LEED Certification or Built Green

Certification at the highest level determined to be economically feasible by Buyer, in the exercise of its best business judgment. This covenant shall expire upon the completion of the construction of the Project in a manner consistent with the requirements of this Agreement, including without limitation, the development schedule requirements in Section 4.5.11 of this Agreement.

**4.5.3. Affordable Housing.** Buyer shall covenant that at least 100 of the housing units in the development must be affordable housing, as described below ("Affordable Housing," which includes "Affordable Ownership Units" and "Affordable Rental Units"). This requirement may be achieved through the provision of Affordable Ownership Units, Affordable Rental Units or a combination of both forms of Affordable Housing, to households meeting the following criteria for a period of at least twenty (20) years from initial occupancy of the units:

a. If the development includes Affordable Ownership Units, the units must be sold to households earning no more than 100% of the annual median income for King County. Affordable Ownership Units must be occupied only as the household's sole primary residence.

b. If the development includes Affordable Rental Units, the units must be available to households earning no more than 60% of the annual median income for King County.

c. Median income amounts shall be defined by the HUD Income Guidelines for King County in effect at the time the units are rented or sold.

d. All Affordable Housing units must have the same basic finish or features as those in non-luxury market rate units. Tenants or owners of Affordable Housing units must have the same access to all facilities and programs, other than parking, as non-luxury market rate tenants. Consistent with the Project's upgrade policy for non-luxury units, all initial purchasers of Affordable Ownership units shall be given the opportunity to upgrade their unit's finish at their expense.

e. As a guide, Affordable Housing units should be at least: 500 useable square feet if studio, 700 useable square feet if 1 bedroom, 800 useable square feet if 2 bedroom/1 bathroom, 900 useable square feet if 2 bedroom/2 bathrooms, and 1,000 useable square feet if 3 bedrooms. The average size of Affordable Housing studio units should be 550 useable square feet.

f. At least 35% of the Affordable Housing units shall consist of two or more bedrooms.

**4.5.4. Workforce Housing.** Buyer shall covenant to provide to the extent, in the exercise of its best business judgment, it determines economically feasible, Workforce Housing units, which may be either Workforce rental or Workforce ownership units. Workforce Housing units shall be rented or sold to households earning no more than 115% of annual median income, which median income shall be determined in the same manner as for Affordable Housing. This covenant shall expire upon the completion of the construction of the Project in a manner consistent with the requirements of this Agreement, including without limitation, the development schedule requirements in Section 4.5.11 of this Agreement.

**4.5.5. Public Stadium Authority Parking.** Buyer shall covenant to provide to the PSA 491 permanent on-site parking spaces, which number is calculated according to Section 10 of the Agreement and Letter of Intent dated June 25, 1998, to replace PSA's existing parking spaces on the Property, and to provide the PSA temporary on or off-site parking spaces to replace PSA's existing parking spaces to the extent such spaces are displaced during construction. The design and operation of, and form of interest in the permanent replacement parking, and the design and operation of the temporary replacement parking must be acceptable to the PSA. The location of the temporary replacement parking must be acceptable to the PSA if it is not located on the Property. The PSA shall be permanently entitled to the net revenue stream (gross revenue less operation and maintenance costs) for the temporary and permanent replacement parking spaces. This covenant shall run in perpetuity. Buyer may, however, be relieved of complying with some or this entire covenant with the written consent of the PSA.

**4.5.6. King Street Station Parking.** Buyer shall covenant to provide at least 70 on-site pay-for-parking spaces to be available for use by persons visiting King Street Station. This parking shall be located in the Project and near King Street Station and be readily identifiable to the public. Buyer shall be entitled to retain revenue from this parking. Parking rates shall be set by Buyer and may not exceed market rates for the vicinity. This covenant shall run in perpetuity. Buyer may, however, be relieved of complying with some or this entire covenant with the written permission of the owner of the King Street Station.

**4.5.7. Stadium View Corridor.** Buyer shall covenant that the development on the Property shall not exceed 70 feet in height, measured in the manner for measuring height required by the applicable portions of Seattle Municipal Code Section 23.86.006 to which Buyer vests in its filing of an application for a master use permit, for a distance of 60 feet on each side of the 90-foot-wide easement on the Second Avenue Extension that is granted to the PSA, unless written approval is obtained from the PSA and First and Goal, Inc. ("FGI") or its successor in interest. This view covenant is intended to provide a

view corridor to and from the Stadium located to the South of the Property, which Stadium is owned by the PSA. This covenant shall run in perpetuity.

**4.5.8. PSA and FGI Comments.** Buyer shall covenant to provide FGI and PSA the right to early review and comment on Buyer's development plans for the North Half Lot. This covenant shall expire upon the completion of the construction of the Project in a manner consistent with the requirements of this Agreement, including without limitation, the development schedule requirements in Section 4.5.11 of this Agreement.

**4.5.9. Stadium and Exhibition Center Operations.** Buyer shall covenant that it waives any right to complain of noise, lighting, or any other function of a normally operating Stadium and Exhibition Center facility that is in compliance with applicable noise and other regulations, and that this covenant will be included in any lease or deed for housing on the Property. This covenant shall run in perpetuity.

**4.5.10. Special Use Agreement.** Buyer shall covenant that it shall notify the PSA and FGI to cease use of the Property consistent with section II(A)(5) of the Special Use Agreement dated December 11, 1998 as amended and assigned, and Section 9(c) of the Agreement and Letter of Intent dated June 25, 1998. This covenant shall expire upon the completion of the construction of the Project in a manner consistent with the requirements of this Agreement, including without limitation, the development schedule requirements in Section 4.5.11 of this Agreement.

**4.5.11. Development Schedule.** Buyer shall covenant that it shall take all reasonable steps to commence development of the Project by July 1, 2008, and that in no event shall it commence construction later than twenty four (24) months after the Closing Date. Buyer shall complete construction of the Project no later than ten (10) years after commencement of construction. Seller acknowledges that the Project will be completed in multiple phases over a period of years. The foregoing deadlines are subject to extension upon prior written approval by Seller; such approval not to be unreasonably withheld, conditioned, or delayed. Seller must receive any request for an extension from Buyer at least ten (10) business days prior to the applicable deadlines. This covenant shall expire upon the completion of the construction of the Project in a manner consistent with the requirements of this Agreement.

#### **4.6. Compatibility.**

**4.6.1.** Buyer shall ensure that the development of the Project and the Project when completed shall be generally compatible with and integrate well with existing and planned land uses in the surrounding area, including pedestrian corridors, transportation corridors, and intermodal transportation connectivity, and specifically shall be compatible with the continuing operation of the Stadium and Exhibition Center owned by the PSA.

The Parties anticipate that this requirement of this Agreement shall be complied with through Buyer's or its successors or assigns satisfaction of conditions imposed through regulatory permitting process for the Project.

**4.6.2. Circulation Plan and Staging.** The North Half Lot is currently used by PSA for parking and, as necessary, by PSA and its tenants for staging for events at the Stadium and Exhibition Center. This Agreement requires Buyer to provide PSA with permanent replacement parking on the Property, in which the design, operation and form of interest in must be acceptable to PSA, and temporary replacement parking, in which the design and operation must be acceptable to PSA. While the replacement parking being provided by Buyer might, in some instances, serve as a staging area, it is not contemplated that it would provide a clear-height staging area.

The amount of future space required for staging for Exhibition Center and Stadium events is difficult to quantify, as is the number of event days each year requiring maximum staging areas. Nonetheless, large consumer and other shows have grown in size and number since the Stadium and Exhibition Center opened and will likely continue to use the Stadium and Exhibition Center after the Property is developed. It is reasonable to expect that the need for clear-height staging for these large shows will increase, not diminish.

Seller has explored with the City of Seattle various options for staging large events using some of the streets in and around the Property, and the City has supported allowing some event staging on Occidental Avenue South. It is anticipated that the City's support will be documented in a "term permit" or other form of long-term approval for the intermittent use of the street for staging. In addition, the Agreement and Letter of Intent, dated June 25, 1998, says that the City shall designate S. Royal Brougham Way between the mainline railroad tracks and Occidental Avenue S. as a local access street, if phase II of the SR 519 project is built and the railroad crossing at S. Royal Brougham Way is closed, and in such case, the City shall work on a street design for this segment of Royal Brougham that would allow use of the street area for event staging.

Nonetheless, such on-street staging may not fully replace the loss of clear-height staging area currently provided by the Property. Overall traffic circulation through and around the Property, the Stadium, and the Exhibition Center, and the entire Pioneer Square and south downtown area must be maintained if the proposed development is to be successful, and if the success of current area uses is to continue. The impacts of traffic and circulation must also be addressed so that businesses, residents, tenants, and uses of the development and surrounding area continue to have access, regardless of whether events are being staged or held at the Stadium and the Exhibition Center.

Therefore, as part of the development, Buyer agrees at its sole expense to prepare a traffic, circulation, and staging study designed to inform Buyer of the traffic and circulation issues that arise during the staging of large events. This study will be prepared early in the design development process so that the staging needs of events at the Stadium and the Exhibition Center can be understood, alternatives considered, and reasonable measures evaluated during the design process regarding lost clear-height staging. In preparing the study, Buyer and its consultants agree to receive and consider input from the PSA and FGI. The information developed in the course of this study will be used in planning the site layout, design, and circulation elements of the development. Seller is expressly not requiring Buyer to replace the lost staging area. In addition, any accommodations made by Buyer in its development of the Property will be the sole responsibility of Buyer, without recourse to Seller.

**4.7. TERMINATION OR INVALIDATION OF STADIUM AGREEMENTS.** If the Agreement and Letter of Intent, dated June 25, 1998, the Agreement on Stadium and Exhibition Center Property Contributions and Reservations of Possessory rights dated September 30, 1998, and related agreements are terminated by a third party (i.e., not by Buyer or Seller) or invalidated by a court of competent jurisdiction as a result of a lawsuit brought by a third party prior to Closing, the Parties agree that any and all terms and conditions of this Agreement that derive from or relate to the Stadium Agreements will no longer be required by the Stadium Agreements and may be renegotiated along with the Purchase Price, and that the Parties will in good faith enter into such negotiations upon the written request of either Party. If such renegotiation occurs, the Seller will work and consult with the PSA and its master tenant FGI on appropriate terms and conditions during the renegotiations.

## **ARTICLE 5. INSPECTION AND CONTINGENCIES**

**5.1. BUYER'S DUE DILIGENCE CONTINGENCY.** Buyer shall satisfy itself by investigation and inspection, at its cost and expense and in its sole and absolute discretion that the condition of the Property for Buyer's contemplated use and the feasibility of Buyer's intended redevelopment of the Property (including zoning, land use, building code, environmental (including appropriate concurrence from the Department of Ecology to enable development activities which meet the substantive requirements of the Model Toxics Control Act), financial, (leasing and financing matters) meet with its approval, and that Buyer shall be able to obtain a master use permit and building permits for the Buyer's intended development of the Property. If Buyer approves of the condition of the Property and the feasibility of the redevelopment and obtains the permits, Buyer agrees to notify Seller, in writing, thereby removing the contingency ("Buyer's Contingencies"). Buyer shall make such determination on or before the later of: (a) 5:00 pm on March 20, 2008 or (b) the later of thirty (30) days after (i) Seller has removed its contingencies or (ii) the deadline for Seller to remove its contingencies under section 5.2 below ("Due Diligence Period"). In the event this contingency is not satisfied or waived by Buyer within the Due Diligence Period (as the same may be extended pursuant to Section 5.3 below),

either Party may terminate this Agreement upon written notice to the other, and neither party shall have any further rights or obligations to the other hereunder.

**5.1.1. Inspections.** During the Due Diligence Period, Buyer, its designated representatives or agents shall have the right at Buyer's expense to (i) perform any and all tests, inspections, studies, surveys or appraisals of the Property deemed necessary, on any subject, by the Buyer (subject to the limitations set forth below and Section 5.1.2 Right of Entry); (ii) obtain a Phase I or Phase II Environmental Assessment on the Property and perform any and all tests, inspections and studies deemed necessary therewith; (iii) examine all Due Diligence materials that Buyer may reasonably request from Seller (Seller agrees to deliver to Buyer copies of all such materials that are not subject to attorney-client privilege or that the County is not otherwise prohibited from disclosing by law and Seller shall provide a description of any materials not provided to Buyer by Seller because of attorney-client privilege or because the materials are otherwise prohibited from disclosure by law); (iv) determine to its satisfaction whether approvals, permits and variances can be obtained under applicable land use and zoning codes for Buyer's proposed development of the Property; and (v) determine whether Buyer's proposed development of the Property is economically feasible.

**5.1.2. Right of Entry.** Buyer and Buyer's designated representatives or agents shall have the right and Seller hereby grants to Buyer and Buyer's designated representatives the right to enter the Property pursuant to a County Special Use Permit, which Seller agrees will be processed and granted in a timely manner, and conduct the tests, investigations and studies set forth in this Article 5, upon three (3) days advance written notice; provided that such right of entry will be limited to those times, dates and activities that will not interfere with the uses that PSA and FGI are authorized to undertake on the Property by the Special Use Agreement dated December 11, 1998, as amended and assigned, and that Buyer shall coordinate its activities with PSA and FGI. Invasive tests of the Property, such as drilling or excavation shall be subject to Seller's prior written approval, which may require issuance of an additional Special Use Permit. Except for invasive tests approved in writing by Seller, the Buyer will not be permitted to undertake activities that damage County property. In connection with such inspections, Buyer agrees to hold harmless, indemnify and defend Seller, its officers, agents and employees, from and against all claims, losses, or liability, for injuries, sickness or death of persons, including employees of Buyer caused by or arising out of any act, error or omission of Buyer, its officers, agents, contractors, subcontractors or employees in entering Seller's property for the above purposes, to the extent not caused by or arising out of any negligent act, error or omission of Seller, its officers, agents and employees.

**5.2. SELLER'S DUE DILIGENCE CONTINGENCY.** Seller shall satisfy itself by investigation and inspection, at its cost and expense in its sole and absolute discretion that Buyer's development of the Property complies with the conditions contained in Seller's RFP 201-05RLD and addenda, Buyers RFP Response, and the terms and conditions set forth in Sections 4.4, 4.5 and 4.6 herein, that no valid right-of-first refusal under the Stadium Agreements

has been asserted, that conveyance is appropriate with or without additional or revised conditions consistent with and based on State Environmental Policy Act review, and that conveyance is appropriate based on review (if any) by the Department of Ecology with regard to compliance with the Model Toxics Control Act. Closing shall not occur until Seller removes or waives this contingency, which shall not occur until Seller determines that this contingency has been satisfied or may be waived based on Buyer having achieved the following conditions:

- 5.2.1.** Buyer shall have received a Master Use Permit authorizing the entire Project from the City of Seattle;
- 5.2.2.** Buyer shall have obtained any necessary zoning change for the Property that raises the permissible height of buildings constructed as part of the Project on the Property to meet the approved design of the Project;
- 5.2.3.** Buyer shall have reached agreement with the PSA for the design and operation of, and form of interest in the permanent replacement parking spaces to be located on the Property;
- 5.2.4.** Buyer shall have reached agreement with the PSA with regard to the design and location and operation of the temporary replacement parking spaces during construction of the Project;
- 5.2.5.** Buyer has provided both PSA and FGI opportunity for early review and comment on the proposed development plans and schedule as provided for in Section 4.5.8; has prepared a traffic, circulation and staging study and has used the information developed in the course of this study in planning the site layout, design, and circulation elements of the Project, as provided for in Section 4.6.2;
- 5.2.6.** Buyer shall have provided to Seller a written notice of ability to proceed demonstrating that it is capable of and will commence construction of the Project in the manner and according to the deadlines set forth in this Agreement and has obtained the financing necessary to do so;
- 5.2.7.** Buyer shall have provided a performance and payment bond, letter of credit, guarantee or other instrument reasonably acceptable to Seller securing the amount of \$ 15 million, adjusted by the Consumer Price Index from the date this Agreement is entered into to the completion of the construction of the Project in a manner consistent with the requirements of this Agreement, to secure payment and performance of the requirements of this Agreement, of any remedies due under this Agreement, and of the indemnification requirements of Section 12.4.4 of this Agreement, which instrument shall not be impaired if Buyer or its successor or assigns files a bankruptcy petition or otherwise becomes insolvent, and which instrument shall be in a form approved by Seller, which approval shall not be unreasonably delayed, conditioned or withheld;
- 5.2.8.** SEPA review for the Project has been completed by the City of Seattle including any administrative appeals associated with such review; and
- 5.2.9.** Seller has obtained a Lot Boundary Adjustment creating a separate parcel for the Property. Seller agrees to apply for the Lot Boundary Adjustment as soon as possible



after execution of this Agreement and to diligently prosecute said process to completion.

Seller agrees not to unreasonably withhold its approval of the satisfaction of the foregoing conditions. If Buyer has made reasonable efforts to obtain PSA's approval pursuant to contingencies 5.2.3 and 5.2.4 above, has submitted a proposal for parking in a timely manner that meets the requirements of this Agreement, and has been unable to obtain PSA's approval, Seller shall remove said contingencies, notwithstanding the lack of such approvals. Seller agrees to notify Buyer, in writing, thereby removing the Seller's Due Diligence Contingency. Seller shall make such determination on or before 5:00 pm on March 20, 2008. In the event this contingency is not satisfied or waived by Seller within the Due Diligence Period, either Party may terminate this Agreement upon written notice to the other, and neither party shall have any further rights or obligations to the other hereunder.

**5.3. EXTENSION.** The Due Diligence Period may be extended by the Buyer for up to four (4) consecutive 90-day periods upon payment for each such extension of a fee of One Hundred Thousand Dollars (\$100,000.00) (each, an "Extension Payment") into escrow. Extension Payments are non-refundable (except as provided in Section 4.1.5 or in the event of Seller's default) and will be applied to the purchase price. To exercise this extension, Buyer shall give written notice to Seller of the extension not later than two (2) business days before the then-applicable end of the Due Diligence Period and shall contemporaneously deposit the Extension Payment into escrow. If a requested extension moves the Closing date beyond June 30, 2008, Buyer shall be deemed to have removed Buyer's Contingencies as to the Stadium Agreements and Stadium Claim only, and all provisions of Section 4.1.4 that result from such removal shall be in full force and effect. Seller's deadline for removing Seller's Contingencies shall be extended for the same time period as any extension of the Due Diligence Period.

**5.4. DEED, RESERVED EASEMENTS AND COVENANTS CONTINGENCY.** Seller and Buyer, within ninety (90) days of executing this Agreement or a longer period as may be agreed to in writing by the Parties, shall have agreed to the form of Deed and Covenants, including without limitation the Affordable Housing Covenants. This period shall, however, be one hundred twenty (120) days for the Reserved Easements referenced in Section 4.4 of this Agreement. In the event this contingency is not satisfied within the time specified, either Party may terminate this Agreement upon written notice to the other, and neither party shall have any further rights or obligations to the other hereunder.

## **ARTICLE 6.**

### **COVENANTS OF SELLER PENDING CLOSING**

**6.1. CONDUCT, NOTICE OF CHANGE.** Seller covenants that between the date hereof and the Closing Date, Seller shall take all such actions as may be necessary to assure that the

representations and warranties set forth in Article 3 hereof will be true and complete as of the Closing Date (except such representations, warranties and matters which relate solely to an earlier date), and all covenants of Seller set forth in this Agreement which are required to be performed by it at or prior to the Closing Date shall have been performed at or prior to the Closing Date as provided for in this Agreement. Seller shall give Buyer prompt written notice of any material change in any of the information contained in the representations and warranties made in Article 3 or elsewhere in this Agreement which occurs prior to the Closing Date.

## **ARTICLE 7 COVENANTS OF BUYER PENDING CLOSING**

**7.1. CONDUCT, NOTICE OF CHANGE.** Buyer covenants that between the date hereof and the Closing Date, Buyer shall take all such actions as may be necessary to assure that the representations and warranties set forth in Article 3 hereof will be true and complete as of the Closing Date (except such representations, warranties and matters which relate solely to an earlier date), and that all covenants of Buyer set forth in this Agreement which are required to be performed by it at or prior to the Closing Date shall have been performed at or prior to the Closing Date as provided for in this Agreement. Buyer shall give Seller prompt written notice of any material change in any of the information contained in the representations and warranties made in Article 3 or elsewhere in this Agreement which occurs prior to the Closing Date.

## **ARTICLE 8. CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS**

All obligations of Buyer hereunder are subject to the fulfillment of each of the following conditions at or prior to the Closing Date. These covenants are for the benefit of Buyer, who may waive any or all of them:

**8.1. DELIVERY OF DOCUMENTS.** Seller shall have delivered to escrow at or prior to Closing all documents required by the terms of this Agreement to be delivered by Seller.

**8.2. REPRESENTATIONS, WARRANTIES AND COVENANTS.** All representations, warranties and covenants of Seller contained herein or in any document delivered pursuant hereto shall be true and correct in all material respects when made and as of the Closing Date.

**8.3. OBLIGATIONS.** All obligations required by the terms of this Agreement to be performed by Seller at or before the Closing Date shall have been properly performed in all material respects.

**8.4. TITLE.** Any and all matters shown or referred to in the Title Commitment to which Buyer has objected within the time specified in Section 4.1, shall have been cured by

Seller, unless such objections have been waived by Buyer. The Title Company shall be irrevocably committed to issue the extended coverage owner's title insurance policy as provided herein as of the Closing Date.

**8.5. APPROVAL OF COUNSEL.** Buyer's counsel shall have approved this document as to form as evidenced by such counsel's signature on this Agreement.

**8.6. CONDEMNATION.** No portion of the Purchased Assets shall have been taken or damaged by any public or quasi-public body, nor shall any such action be pending, and Seller shall not have transferred any portion of the Purchased Assets to any such body in lieu of condemnation.

**8.7. BUYER'S CONTINGENCIES.** Buyer shall have satisfied or waived Buyer's Contingencies as provided herein.

## **ARTICLE 9. CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS**

All obligations of Seller to close on the Closing Date are subject to the fulfillment of each of the following conditions at or prior to the Closing Date. These covenants are for the benefit of Seller, who may waive any or all of them:

**9.1. REPRESENTATIONS, WARRANTIES AND COVENANTS.** All representations, warranties and covenants of Buyer contained herein or in any document delivered pursuant hereto shall be true and correct in all material respects when made and as of the Closing Date.

**9.2. OBLIGATIONS.** All obligations required by the terms of this Agreement to be performed by Buyer at or before the Closing Date shall have been properly performed in all material respects.

**9.4. DELIVERY OF DOCUMENTS.** Buyer shall have delivered to escrow at or prior to Closing Date all documents required by the terms of this Agreement to be delivered by Buyer.

**9.5. TITLE.** The Title Company shall be irrevocably committed to issue the extended owner's policy of title insurance for the full amount of the Purchase Price, effective as of the Closing Date, containing no exceptions other than the Permitted Exceptions.

**9.6. SELLER'S CONTINGENCIES.** Seller shall have satisfied or waived Seller's Contingencies as provided herein.

## **ARTICLE 10.**

## CLOSING

**10.1. CLOSING/CLOSING DATE.** The Closing shall take place ten days (or on such later business day as the parties may agree) after Buyer and Seller remove in writing of all Buyer's and Seller's Contingencies (the "Closing Date").

**10.2. ESCROW.** Upon execution of this Agreement, the parties agree to set up an escrow account with First American Title Insurance Company, 2121 Fourth Avenue, Suite 800, Seattle, Washington 98121; Attn: Judy Fredrickson (the "Escrow Agent"). The Escrow Agent shall serve as Closing Agent for the transaction contemplated herein and the Closing shall occur in the offices of Escrow Agent in Seattle, Washington. The title, right of possession and interest to the Purchased Assets shall pass to Buyer upon the Closing Date and thereafter the risk of loss thereof shall be the responsibility of Buyer.

**10.3. PRORATIONS.** All prorations, unless otherwise specifically provided for herein, shall be made as of the Closing Date.

**10.3.1. Closing Costs.** Seller shall pay the premium and sales tax thereon, for a standard coverage owner's policy of title insurance. Buyer shall pay the additional premium for extended coverage. Seller and Buyer shall each pay one-half of the escrow fees. Buyer shall pay the recording fees for the deed and its own attorneys' fees. Except as otherwise provided in this Section, all other expenses hereunder shall be paid by the party incurring such expenses.

**10.3.2. Taxes.** Seller is exempt by law from the payment of real property ad valorem taxes, LIDs and assessments ("Taxes") on the Property.

**10.4. SELLER'S DELIVERY OF DOCUMENTS AT CLOSING.** At the Closing, Seller will deliver to Buyer the following properly executed documents:

**10.4.1.** Seller's Certificate of Non-Foreign Status substantially in the form of **EXHIBIT C**, attached hereto;

**10.4.2.** A Statutory Warranty Deed conveying the Property and accompanying excise tax affidavit;

**10.4.3.** A Bill of Sale and Assignment duly executed by the Seller in the form of **EXHIBIT D**, attached hereto for the Personal Property, if any

**10.5. BUYER'S DELIVERY OF DOCUMENTS AND PURCHASE PRICE AT CLOSING.** At the Closing, Buyer will deliver to Seller the following:

**10.5.1** Cash or immediately available funds in the amount of the Purchase Price.

## **ARTICLE 11. TERMINATION AND DEFAULT**

**11.1. TERMINATION BY EITHER PARTY WITHOUT FAULT.** Either party may terminate this Agreement if a condition to its obligation to consummate the transactions contemplated by this Agreement as set forth in Articles 5, 8 and 9 has not been satisfied as of the Closing Date. In that event, if neither party is in default under this Agreement, the parties shall have no further obligations or liabilities to one another and all documents and earnest money delivered into escrow shall be returned to the appropriate party, provided, however, that if termination occurs as a result of a court ruling as described in Section 4.1.5 of this Agreement, the resulting obligations, liabilities and refunds owed between the parties will be as set forth in that Section 4.1.5.

**11.2 SELLER'S REMEDIES.** Except as provided for in Section 12.4, in the event that the transaction fails to close on account of Buyer's default, the Earnest Money deposit and any Extension Payments made by Buyer shall be forfeited to Seller as the sole and exclusive remedy available to Seller for such failure. The Parties agree that any Extension Payments are not to be considered as part of the Earnest Money deposit for purposes of complying with RCW 64.04.005 because such Extension Payments are for the extension of the Due Diligence Period and are not a part of the purchase price.

**11.3 BUYER'S REMEDIES.** In the event that the transaction fails to close on account of Seller's default, the Earnest Money Note or Earnest Money deposit, as the case may be, and any Extension Payments shall be returned to Buyer. Buyer shall alternatively be entitled to the remedy of specific performance. These shall be the sole and exclusive remedies available to Buyer for such failure.

## **ARTICLE 12**

### **CONDITION AND OPERATION OF THE PROPERTY**

**12.1. DISCLAIMER.** Except for the express representations and warranties in Section 3.1 and in the Statutory Warranty Deed, Seller does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose, with respect to the Purchased Assets and no employee or agent of Seller is authorized otherwise. Without limitation, except as expressly provided in Section 3.1 and the Statutory Warranty Deed, Seller does not make any warranties or representations with respect to the structural condition of the Purchased Assets, the area of land being purchased, the existence or non-existence of any Hazardous Substances or underground storage tanks, or the actual or threatened release, deposit, seepage, migration or escape of Hazardous Substances, from or into the Purchased Assets, and the compliance or noncompliance of the Purchased Assets with applicable federal, state, county and local laws and regulations, including, without limitation, environmental laws and regulations and seismic/building codes, laws and regulations. Seller has

not intentionally withheld any material information concerning Hazardous Substances with respect to the Property. For purposes of this Agreement, the term Hazardous Substances shall mean: "hazardous substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 ("RCRA") as amended; hazardous wastes, hazardous materials, hazardous substances, toxic waste, toxic materials, or toxic substances as defined in state or federal statutes or regulations; asbestos-containing materials, polychlorinated biphenyls; radioactive materials, chemicals known to cause cancer or reproductive toxicity; petroleum products, distillates or fractions; any substance the presence of which is prohibited by statute or regulation; and any substance for which any statute or regulation requires a permit or special handling in its use, collection, storage, treatment or disposal.

**12.2. CONDITION OF PROPERTY AND RELEASE.** Buyer acknowledges that, within the Due Diligence Period, it will have conducted a physical inspection and made all investigations Buyer deems necessary in connection with its purchase of the Purchased Assets. Upon waiver or satisfaction by Buyer of its contingencies pursuant to Article 5, Buyer will be deemed to have approved the physical condition of the Property and, subject to the express representations and warranties contained in Section 3.1 of this Agreement or the Statutory Warranty Deed, agrees to accept and purchase the same "AS IS, WHERE IS", including, without limitation, the existence or non-existence of any pollutants, contaminants, hazardous waste, dangerous waste, toxic waste, underground storage tanks or contaminated soil, or the actual or threatened release, deposit seepage, migration or escape of such substances at, from or into the Property and the compliance or noncompliance of the Property with applicable federal, state, county and local laws and regulations including, without limitation, environmental laws and regulations. Buyer acknowledges and agrees that, except to the extent of Seller's express representations and warranties in Section 3.1 of this Agreement or the Statutory Warranty Deed, and, except to the extent of any fraud or misrepresentation by Seller, Seller shall have no liability for, and that Buyer shall have no recourse against the Seller for, any defect or deficiency of any kind whatsoever in the Property including without limitation those relating to Hazardous Substances, without regard to whether such defect or deficiency was discovered or discoverable by the Buyer.

Following the Closing Date, except to the extent of Seller's express representations and warranties in Section 3.1 of this Agreement or in the Statutory Warranty Deed and, except to the extent of any fraud or deliberate misrepresentation by Seller, Buyer shall be deemed to have released Seller from all claims, liability and damages arising from the condition of the Purchased Assets, including its environmental condition, except that nothing in this agreement shall be deemed to waive any statutory claim for contribution that Buyer might have against Seller under federal or state environmental statutes that arises from hazardous materials deposited or released on the Property during Seller's period of ownership. This paragraph shall survive closing and be binding upon and benefit the successors and assigns of both parties.

**12.3. PROPERTY ACQUISITION AND DEVELOPMENT.** As between Buyer and Seller, Buyer shall be responsible for all of its costs associated with the acquisition of the Property and

for all costs of development of the Property, including without limitation responsibility for all land use approvals, permits, site plan approvals, environmental approvals, and any other governmental approvals necessary for Buyer to develop and construct on the Property with the exception of the Boundary Line Adjustment, which will be the responsibility of the Seller.

**12.4. DEVELOPMENT REQUIREMENT.** In the development of the Property, Buyer, its successors, designees, and assigns, shall adhere, both as a matter of contract under this Agreement and as a matter of compliance with the easements and covenants in the Deed, with all the terms and conditions contained in the requirements of Sections 4.4, 4.5 and 4.6 of this Agreement, which together are referenced as the "Development Requirements."

**12.4.1.** Notwithstanding the limitations on remedies set forth in Article 11 of this Agreement, Seller, its successors, designees or assigns shall have the following remedies against Buyer, its successors, designees or assigns for any material violation of the Development Requirements:

(a) **Default.** If Buyer fails to observe or perform any of the terms, conditions, obligations, restrictions, covenants, representations or warranties of the Development Requirements, and if such noncompliance is not corrected as provided herein, then such noncompliance shall be considered an event of default and the following shall occur:

(b) **Seller's remedies.** Seller shall be entitled to all remedies in law or in equity against Buyer, including without limitation to: 1) compel specific performance by Buyer of its obligations under this Agreement, 2) to restrain by injunction the actual or threatened commission or attempt of a breach of the Development Requirements and to obtain a judgment or order specifically prohibiting a violation or breach of the Development Requirements and 3) an award of damages resulting from violation of the Development Requirements. In seeking any equitable remedies, Seller shall not be required to prove or establish that Seller does not have an adequate remedy at law. Buyer hereby waives the requirement of any such proof and acknowledges that Seller would not have an adequate remedy at law for Buyer's breach of the Development Requirements.

(c) **Liquidated damages - affordable housing.** In the alternative to the remedies set forth in Section 12.4.1(b), Seller may in its sole discretion elect to obtain liquidated damages for the breach of the Affordable Housing Development Requirements. The Parties recognize and agree that the purchase of the Property was discounted in consideration of Seller's requirement that the Project include a minimum number of Affordable Housing units. In the event Buyer fails to timely construct or maintain the minimum number of required Affordable Housing units, Buyer shall forfeit and pay liquidated damages to the Seller. Those damages shall be applied on a per unit basis, with the base value on the date of the execution of this Agreement of \$72,000 per unit. On the date of default this base value shall be adjusted through application of the U.S. City Average Consumer Price Index - All Urban Consumers on an annual, compounded basis for the time between execution of this Agreement and the date of default. Liquidated damages on a

per unit basis shall then be calculated by multiplying the dollar amount that equals five (5) percent of the adjusted base value by the number of years of the twenty (20) year Affordable Housing requirement that remain to be fulfilled, and adding the resulting amount to the adjusted base value. Such amount represents liquidated damages and does not constitute a penalty. Such amount is a reasonable estimate of the amount of damages Seller will suffer as a result of a breach of the Affordable Housing Development Requirements, and is fixed by the Parties due to the likely difficulty of determining actual damages.

**(d) Liquidated damages - public stadium authority parking covenant.** In the alternative to the remedies set forth in Section 12.4.1(b), Seller may in its sole discretion elect to obtain liquidated damages for the breach of the Public Stadium Authority Parking Development Requirements and obtain the protection of section 12.4.4(a) of this Agreement. The Parties recognize and agree that the purchase of the Property was discounted in consideration of Seller's requirement that Buyer covenant to provide the PSA on-site parking spaces as more fully set forth in Section 4.5.5. In the event Buyer fails to timely construct or maintain the required permanent parking spaces, Buyer shall forfeit and pay liquidated damages to the Seller. Those damages shall be applied on a per parking stall basis, with the base value on the date of the execution of this Agreement of \$15,000 per stall. On the date of default this base value shall be adjusted through application of the U.S. City Average Consumer Price Index - All Urban Consumers on an annual, compounded basis for the time between execution of this Agreement and the date of default. Liquidated damages on a per stall basis shall be the resulting amount. Such amount represents liquidated damages and does not constitute a penalty. Such amount is a reasonable estimate of the amount of damages Seller will suffer as a result of a breach of the Public Stadium Authority Parking Development Requirements, and is fixed by the Parties due to the likely difficulty of determining actual damages.

**12.4.2.** Before Seller pursues a remedy against Buyer for breach of the Development Requirements, Seller shall provide written notice specifying the default to Buyer. Buyer shall thereafter have a thirty (30) day period to cure such default (or if such default is not capable of cure within thirty (30) days, such additional period as is reasonably necessary for Buyer to complete such cure, provided that Buyer commences cure within such thirty (30) day period and thereafter diligently pursues it to completion). Said period of cure shall not, however, be provided with regard to a breach of the Development Schedule Development Requirements set forth in Section 4.5.11.

**12.4.3.** No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of the Seller to enforce the same or obtain relief against or recover for the continuation or repetition of such breach or violation or any other breach or violation thereof at any later time or times.

**12.4.4. Indemnification - other project covenants.** In addition to and separate from the remedy provisions in 12.4.1- 12.4.3, Buyer, its successors, designees and assigns, agrees to protect, defend, indemnify and hold harmless the Seller, its officers, officials, employees and



agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, arising out of or in any way resulting from a failure of Buyer, its successors, designees and assigns to wholly or partially comply with the following Development Requirements:

- (a) The Public Stadium Authority Parking requirement in Section 4.5.5 of this Agreement;
- (b) The King Street Station Parking requirement in Section 4.5.6 of this Agreement;
- (c) The Stadium View Corridor requirement in Section 4.5.7 of this Agreement;
- (d) The Stadium and Exhibition Center Operations requirement in Section 4.5.9 of this Agreement;
- (e) The Special Use Agreement requirement in Section 4.5.10;
- (f) The Compatibility and the Circulation Plan and Staging requirements in Section 4.6 of this Agreement;
- (g) The PSA and FGI Comments requirement in Section 4.5.8 of this Agreement;
- (h) The Development Scope Requirement in Section 4.5.1 of this Agreement; and
- (i) The Housing Requirement in Section 4.5.2 of this Agreement.

**12.4.5.** Any of the deadlines set forth in this Section 12.4 shall be extended by reason of Force Majeure. Buyer shall not be deemed to be in default with regard to performance of the Development Requirements for delays caused by actions beyond the control and without the fault of Buyer ("Force Majeure"), including without limitation, delays to performance due to war, acts of terrorism, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, major casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, weather or soils conditions resulting from weather that necessitate delays, provided that the lack of funds or financing of Buyer shall not be deemed a cause beyond the control or without the fault of Buyer.

**12.5. RISK OF LOSS.** Until the Closing Date, the risk of loss relating to the Property shall rest with the Seller. Risk of loss shall be deemed to include any property damage occurring as a result of casualty, including, but not limited to, fire, earthquakes, tremors, wind, rain or other natural occurrence or other Acts of God. If such casualty occurs, Buyer may elect to terminate this Agreement pursuant to Section 11.1, provided, that if Buyer elects to terminate Seller shall

be given a reasonable opportunity to cure such damage or to reasonably adjust the Purchase Price to reflect such property damage. Notice of an election to terminate under this section shall be provided in writing consistent with Section 13.4.

### ARTICLE 13. MISCELLANEOUS PROVISIONS

**13.1. NATURE AND SURVIVAL OF REPRESENTATIONS AND WARRANTIES.** Each statement, representation, warranty, indemnity, covenant, and agreement made by Seller and Buyer in this Agreement or in any document, certificate or other instrument delivered by or on behalf of Seller or Buyer pursuant to this Agreement or in connection herewith shall be deemed the representation, warranty, indemnity, covenant and agreement of Seller and Buyer and shall survive the Closing Date unless a different time period is expressly provided for in this Agreement and all such statements are made only to and for the benefit of the parties hereto, and shall not create any rights in other persons.

**13.2. TIME IS OF THE ESSENCE.** Time is of the essence in the performance of this Agreement.

**13.3. NOTICES.** Any and all notices or other communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given upon receipt when personally delivered or sent by overnight courier or two (2) days after deposit in the United States mail if by first class, certified or registered mail, return receipt requested. All notices shall be addressed to the parties at the addresses set forth below or at such other addresses as any parties may specify by notice to all other parties and given as provided herein:

**If to Buyer:** Thomas B. Parsons  
Senior Vice President and General Manager  
Opus Northwest, L.L.C.  
13920 S.E. Eastgate Way, Suite 250  
Bellevue, WA 98005

*With a copy to:* Brad J. Osmundson  
General Counsel  
Opus Northwest, L.L.C.  
10350 Bren Road West  
Minnetonka, MN 55343

*And to:* Kevin Daniels  
President

Nitze-Stagen & Co., Inc.  
2401 Utah Avenue South, Suite 305  
Seattle, WA 98134

**If to Seller:** Bob Thompson  
Real Estate Services Section  
Facilities Management Division  
Department of Executive Services  
King County Administration Building  
500 Fourth Avenue, Room 500  
Seattle, WA 98104-2337

*With a copy to:* King County Prosecuting Attorney  
Attn: Pete Ramels  
400 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**13.4. ENTIRE AGREEMENT AND AMENDMENT.** This writing (including the exhibits attached hereto) constitutes the entire agreement of the parties with respect to the subject matter hereof and may not be modified or amended except by a written agreement specifically referring to this Agreement and signed by all parties hereto.

**13.5. SEVERABILITY.** In the event any portion of this Agreement shall be found to be invalid by any court of competent jurisdiction, such holding shall not impact or affect the remaining provisions of this Agreement unless that court of competent jurisdiction rules that the principal purpose and intent of this contract should and/or must be defeated, invalidated or voided.

**13.6. WAIVER.** No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any prior or subsequent breach or default.

**13.7. BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of each party hereto, its successors and assigns.

**13.8. LEGAL RELATIONSHIP.** The parties to this Agreement execute and implement this Agreement solely as Seller and Buyer. No partnership, joint venture or joint undertaking shall be construed from this Agreement.

**13.9. CAPTIONS.** The captions of any articles, paragraphs or sections contained herein are for purposes of convenience only and are not intended to define or limit the contents of said articles, paragraphs or sections.

**13.10. COOPERATION.** Prior to and after the Closing Date the parties shall cooperate, shall take such further action and shall execute and deliver further documents as may be reasonably requested by the other party in order to carry out the provisions and purposes of this Agreement.

**13.11. GOVERNING LAW.** This Agreement and all amendments thereof shall be governed by and construed in accordance with the laws of the State of Washington applicable to contracts made and to be performed therein, without giving effect to its conflicts of law provisions.

**13.12. NON-MERGER.** The terms and provisions of this Agreement will not merge in, but will survive, the Closing of the transaction contemplated under this Agreement.

**13.13 ASSIGNMENT.** Buyer shall not assign this Agreement or any rights hereunder without Seller's prior written consent, which shall not be unreasonably withheld in the case of Buyer assigning the Agreement to a limited liability company or other entity of which Buyer is a member so long as the assignee agrees to be bound by the terms and provisions of this Agreement and demonstrates that it is financially able to perform the terms and provisions of this Agreement.

**13.14. 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. All parties acknowledge and represent, as an express term of this Agreement, that they have had the opportunity to obtain and utilize legal review of the terms and conditions outlined in this Agreement, although each party must determine if they wish to obtain and pay for such legal review. Each party shall be and is separately responsible for payment of any legal services rendered on their behalf regarding legal review of the terms found in this Agreement.

**13.15. VENUE.** In the event of any litigation hereunder, the Superior Court of King County, Washington shall have the exclusive jurisdiction and venue.

**13.16. THIRD PARTY BENEFICIARIES.** This Agreement is made and entered into for the sole protection and benefit of the parties hereto. No other person or entity shall have any right of action or interest in this Agreement based on any provision set forth herein.

**13.17. TERMINATION OF OFFER:** Buyer's offer to acquire the Property under the terms of this Agreement as evidenced by Buyer's execution of this Agreement shall terminate if not accepted by Seller through Seller's execution of this Agreement on or before July 1, 2007, unless that date is extended by Buyer.

**13.18. EXHIBITS.** The following Exhibits described herein and attached hereto are fully incorporated into this Agreement by this reference:

<b>EXHIBIT A</b>	Legal Description of Property
<b>EXHIBIT B</b>	Form of Earnest Money Promissory Note
<b>EXHIBIT C</b>	Certificate of Non-Foreign Status
<b>EXHIBIT D</b>	Bill of Sale and Assignment

*[Signatures of the Parties Appear on the Following Page]*

EXECUTED as of the date and year first above written:

**SELLER:**

**KING COUNTY, a political subdivision  
of the State of Washington**

Name: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_  
Deputy Prosecuting Attorney

**BUYER:**

**NORTH LOT DEVELOPMENT, L.L.C., a  
Delaware limited liability company**

By: Opus Northwest, L.L.C., a member

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: Nitze-Stagen & Co., Inc., a member

Name: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_  
Counsel to North Lot Development, L.L.C.

**EXHIBIT A**

**Property Legal Description**

SALE AREA OF KING COUNTY OWNED NORTH PARKING LOT:  
THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST  
QUARTER OF SECTION 5, TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M., BEING  
A PORTION OF LOTS 1 THROUGH 5, INCLUSIVE, BLOCK 285, AND LOTS 1  
THROUGH 5, INCLUSIVE, BLOCK 325, SEATTLE TIDE LANDS, AS SHOWN ON  
THE OFFICIAL MAPS OF THE SEATTLE TIDE LANDS, IN VOLUME 2, PAGES 29  
THROUGH 32, INCLUSIVE, IN OLYMPIA, WASHINGTON;  
BEGINNING AT THE NORTHWEST CORNER OF THAT TRACT OF LAND  
SURVEYED AND RECORDED IN BOOK 190 AT PAGE 144, RECORDS OF KING  
COUNTY, WASHINGTON;  
THENCE S 88°46'29" E, A DISTANCE OF 673.45 FEET ALONG THE NORTH LINE  
OF SAID TRACT;  
THENCE S 01°11'53" W, A DISTANCE OF 60.00 FEET ALONG SAID TRACT;  
THENCE S 88°48'07" E, A DISTANCE OF 30.14 FEET ALONG SAID TRACT;  
THENCE S 01°13'32" W, A DISTANCE OF 180.92 FEET TO A POINT ON THE  
SOUTH LINE OF LOT 4 AS ADJUSTED BY CITY OF SEATTLE LOT BOUNDARY  
ADJUSTMENT NUMBERS 9806720 AND 9806721, AS RECORDED IN BOOK 129  
AT PAGE 74, RECORDS OF KING COUNTY, WASHINGTON;  
THENCE N 88°44'35" W, A DISTANCE OF 703.25 FEET ALONG SAID ADJUSTED  
BOUNDARY LINE;  
THENCE N 01°08'15" E, A DISTANCE OF 240.51 FEET ALONG THE WEST LINE  
OF SAID TRACT TO THE POINT OF BEGINNING.  
CONTAINING APPROXIMATELY 167,513 SQUARE FEET (3.85 ACRES). SITUATE IN  
THE COUNTY OF KING, STATE OF WASHINGTON.

[Buyer and Seller agree that this legal description may be adjusted based on the Lot Boundary Adjustment to be obtained by Seller]

**End of Legal Description.**

**EXHIBIT B**

**Form of Earnest Money Promissory Note**

**PROMISSORY NOTE**

\$500,000.00

Dated: \_\_\_\_\_, 2007  
Bellevue, Washington

FOR VALUE RECEIVED, the undersigned, North Lot Development, L.L.C., a Delaware limited liability company (“**Maker**”), hereby promises to pay to the order of FIRST AMERICAN TITLE INSURANCE COMPANY (“**Holder**”), 2121 Fourth Avenue, Suite 800, Seattle, Washington 98121, the principal sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), payable in accordance with that certain Real Estate Purchase and Sale Agreement dated \_\_\_\_\_, 2007 with King County as Seller (the “**Agreement**”).

Maker promises to pay all costs, expenses and attorneys’ fees incurred by Holder in the exercise of any remedy (with or without litigation) under this Note in any proceeding for the collection of the debt evidenced by this Note, or in any litigation or controversy arising from or connected with this Note.

This Note shall be construed according to the laws of the State of Washington and pursuant to the terms and conditions of the Agreement.

Time is of the essence of this Note and each and every term and provision hereof.

**MAKER:**

NORTH LOT DEVELOPMENT, L.L.C.

By: \_\_\_\_\_

Its: \_\_\_\_\_



**EXHIBIT C**

**FIRPTA Affidavit**

**Certificate of Non-Foreign Status.**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a United States real property interest by **KING COUNTY** ("Transferor"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations); and
2. Transferor's United States employer identification number is 91-6001327; and
3. Transferor's office address is King County Facilities Management Division, Asset Development and Management Section, Room 500 King County Administration Building, 500 Fourth Avenue, Seattle, WA 98104

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

**TRANSFEROR:**

**KING COUNTY**

By \_\_\_\_\_

Title \_\_\_\_\_

**EXHIBIT D**

**BILL OF SALE AND ASSIGNMENT**

THIS BILL OF SALE is made as of this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by KING COUNTY ("Seller"), in favor of North Lot Development, L.L.C., a Delaware limited liability company ("Buyer"), with reference to the following facts.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Seller does hereby absolutely and unconditionally give, grant, bargain, sell, transfer, set over, assign, convey, release, confirm and deliver to Buyer all of Seller's right, title and interest in and to any and all equipment, furniture, furnishings, fixtures and other tangible personal property owned by Seller that is attached, appurtenant to or used in connection with the real property legally described on the attached **EXHIBIT A** .

Seller represents and warrants that it is the sole owner of, and has good title to, such personal property, and has full right and authority to transfer and deliver the same, and will defend the sale hereby against each and every person claiming otherwise.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the date first above written.

**SELLER:**

By: \_\_\_\_\_

Its: \_\_\_\_\_