



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

February 17, 2010

Ordinance 16762

Proposed No. 2010-0109.2

Sponsors Dunn

1 AN ORDINANCE authorizing the King County executive
2 to execute an amendment to a purchase and sale agreement
3 regarding the sale of the county-owned property known as
4 the Summit Pit regional roads maintenance facility, located
5 in council district 9, to Summit Place 156 LLC; and
6 declaring an emergency.

7 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

8 SECTION 1. Findings.

9 A. King County owns a 156.5 acre undeveloped parcel of land commonly known
10 as the Summit Pit regional roads maintenance facility ("Summit"), located in
11 unincorporated King County, surrounded by the city of Maple Valley, approximately
12 thirty-one miles southeast of downtown Seattle.

13 B. The King County council passed Ordinance 16359 approving execution of a
14 purchase and sale agreement for the transfer of the property to Summit Place 156, LLC
15 ("Summit Place").

16 C. The purchase and sale agreement with Summit Place has been executed by
17 both parties and is dated February 20, 2009.

18 D. Prior to the King County council's approval of the purchase and sale
19 agreement with Summit Place, Ron Sims, former King County executive, Christy A.

20 Todd, interim city manager of the city of Maple Valley, and Brian Ross, president of
21 Summit Place 156 LLC, all signed a Memorandum of Agreement Regarding Joint
22 Planning, Interim Zoning, Pre-Annexation Zoning and Future Annexation of the Summit
23 Pit Property (“the MOA”).

24 E. On December 15, 2008, the King County council passed Motion 12899
25 ratifying the MOA and approving the county executive commencing negotiations with
26 the city of Maple Valley for an interlocal agreement to annex the Summit Pit property.

27 F. The MOA, in Section 5, provides for representatives of the King County
28 executive, the city of Maple Valley, and Summit Place 156 LLC (the “parties”) to meet
29 for the purposes of joint planning, with a goal to adopt an interlocal agreement for joint
30 planning by June 30, 2009.

31 G. The parties met faithfully after the execution of the MOA and agreed upon a
32 joint plan consistent with the MOA.

33 H. The city of Maple Valley adopted Resolution No. R-09-688 on June 22, 2009,
34 which authorizes the city manager to execute an interlocal agreement between the city of
35 Maple Valley and King County to adopt the Joint Plan for Summit Place upon adoption
36 of the interlocal agreement, unchanged, by the King County council.

37 I. The King County executive transmitted the interlocal agreement to the King
38 County council on June 25th, 2009, for approval. The legislation was assigned File
39 Number 2009-0401.

40 J. Following the introduction of legislation approving the interlocal agreement,
41 Summit Place expressed its concern to the King County council regarding the content of
42 the interlocal agreement. As a result, and upon the request of the executive, Summit

43 Place and the city of Maple Valley, action on Proposed Ordinance 2009-0401 was
44 suspended. The executive, Summit Place and the city of Maple Valley initiated
45 discussions to resolve their differences regarding the interlocal agreement and matters
46 related to the purchase and sale agreement for the Summit property.

47 K. As part of these discussions, Summit Place requested a one-year extension of
48 all the deadlines in the purchase and sale agreement pertaining to Summit Place, in
49 exchange for agreeing not to seek permits to develop prior to the property being annexed
50 by the city of Maple Valley. Negotiations with King County regarding Summit Place's
51 request ensued over several months with no resolution.

52 L. On November 9, 2009, the King County council passed Motion 13090 in part
53 requesting that the King County executive negotiate an amendment to the purchase and
54 sale agreement that would extend the deadlines for both parties by one year.

55 M. On January 14, 2009, Summit Place sent an e-mail to the King County
56 executive representative that included a proposal to amend the purchase and sale
57 agreement for the Summit property to extend all critical deadlines for both parties by one
58 year and to establish additional criteria for setting the closing date.

59 N. The King County executive proposes to execute with Summit Place an
60 amendment to the purchase and sale agreement in substantially the form of Attachment A
61 to this ordinance. The amendment would extend all critical deadlines for both parties by
62 one year, reduce the number of Closing Waivers from two to one, set March 1, 2012 as
63 the earliest date for commencing closing and, if closing is conducted in phases, require
64 Summit Place to pay additional amounts at the first two closings that would be included

65 within the purchase price. The additional amounts would equal \$3,200,000 or
66 \$3,280,000 depending on when the phased closing commences.

67 O. The additional payment minimally compensates King County for its economic
68 loss associated with the one year delay.

69 P. In addition to negotiating an amendment to the purchase and sale agreement,
70 the King County council, through Motion 13090, requested that the King County
71 executive negotiate amendments to the MOA that would specify that neither the county
72 nor Summit Place would submit applications for development of the Summit property
73 until the property is annexed into the city of Maple Valley. The Executive intends to
74 negotiate such an amendment simultaneously with negotiation of the amendment to the
75 purchase and sale agreement.

76 Q. This ordinance constitutes an emergency because buyer's contingency expires
77 on February 20, 2010, at which time buyer may terminate the agreement, exposing King
78 County to financial risk before the council can act under its normal procedures.

79 SECTION 2. The King County executive is hereby authorized to amend the
80 February 20, 2009 agreement for the sale of the Summit property, consistent with an
81 amendment to the purchase and sale agreement substantially in the form of Attachment A
82 to this ordinance, and to implement the amendment to the purchase and sale agreement.

83 SECTION 3. The county council finds as a fact and declares that an emergency
84 exists and that this ordinance is necessary for the immediate preservation of public peace,

85 health or safety or for the support of county government and its existing public
86 institutions.

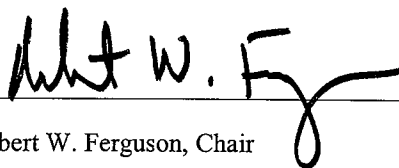
Ordinance 16762 was introduced on 2/16/2010 and passed as amended by the Metropolitan King County Council on 2/16/2010, by the following vote:

Yes: 6 - Ms. Drago, Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Ferguson and Mr. Dunn

No: 0

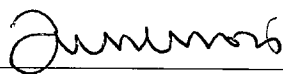
Excused: 3 - Mr. Phillips, Ms. Hague and Ms. Patterson

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Robert W. Ferguson, Chair

ATTEST:



Anne Noris, Clerk of the Council

Attachments: A. First Amendment to Real Estate Purchase and Sale Agreement

**FIRST AMENDMENT TO
REAL ESTATE PURCHASE AND SALE AGREEMENT**

THIS FIRST AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT (the "Amendment") is made and entered into effective the ___ day of _____, 2010, by and between KING COUNTY, a municipal corporation and political subdivision of the state of Washington ("Seller"), and SUMMIT PLACE 156, L.L.C., a Washington limited liability company ("Buyer").

WHEREAS, Seller and Buyer entered into that certain real estate purchase and Sale Agreement dated February 20, 2009 (the "Agreement"), which provided for the sale by Seller and the purchase by Buyer of certain real property in Maple Valley, Washington, which property is more specifically described in the Agreement (the "Property"); and

WHEREAS, the Due Diligence period in Section 5.1 of the Agreement, which contains certain Buyer's Contingencies (as defined in the Agreement), shall expire February 20, 2010; and

WHEREAS, Buyer has requested a one-year extension of all critical dates in the Agreement including Buyer and Seller's feasibility periods and closing dates; and

WHEREAS, Seller, subject to the conditions contained in this Amendment, is willing to agree to the extension proposed by the Buyer.

NOW THEREFORE, in consideration of the covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties herby agree as follows:

1. The second sentence in Section 5.1.2 of the Agreement is hereby amended by changing "shall expire at 5:00 p.m. on the day which is One (1) year from the Effective Date" to "shall expire at 5:00 p.m. on the day which is Two (2) years from the Effective Date."

2. The second sentence in Section 5.2.4. of the Agreement is hereby amended to read as follows: "The period for Seller to waive or express satisfaction with the contingency described in Sections 5.2.2 and 5.2.3 herein shall end March 1, 2012 (Seller's Second Contingency Period)".

3. The last sentence of Section 7.5 of the Agreement is hereby amended to read as follows: "Buyer shall provide Seller with notice describing the land that will be

conveyed or on which the conservation easement will be placed no later than two (2) years from the Effective Date.

3. Section 10.1.1 of the Agreement is hereby amended to read as follows:

10.1.1 Phased Closing. If the Seller's contingency set forth in Section 5.2.2 is satisfied or waived, unless, as provided for in Section 5.2.5.1, Buyer has chosen to proceed under Section 10.1.2, a closing shall occur when a deed to Buyer for one or more parcels comprising the Property is recorded and the amount due for that parcel or those parcels pursuant to Exhibit B is delivered to the Escrow Agent for delivery to Seller. The date on which the initial closing ("Initial Closing") occurs is referred to herein as the "Closing Date." The Initial Closing shall take place on a day mutually agreed upon by the Buyer and Seller that is no later than either:

a) If the Seller's contingency set forth in Sections 5.2.1 is satisfied or waived, Thirty (30) days after Seller has received its Ravensdale Project Approvals and Summit Project Approvals and waived the contingencies set forth in Sections 5.2.2 and 5.2.3, provided that Seller shall be required to provide Buyer sixty (60) days written notice of Seller's intended Closing Date (the "Closing Notice") and if the expiration of the Closing Notice occurs more than thirty (30) days after the contingencies set forth in Sections 5.2.2 and 5.2.3 have both been waived, the Initial Closing shall not take place prior to the intended Closing Date and in no event shall take place prior to March 1, 2012. Each closing after the Initial Closing ("Installment Closing") shall occur on the annual anniversary of the Closing Date ("Installment Closing Date") pursuant to Exhibit B Schedule A, except in the event Buyer exercises one or both of the Closing Waivers referred to in Section 2.2.;

b) If the Seller's contingency set forth in Section 5.2.1 is not waived or satisfied and Buyer has elected this option pursuant to Section 5.2.5.1, or if Seller's contingency set forth in Section 5.2.3 is not waived or satisfied, thirty (30) days after Seller has fully transferred all operations and removed all equipment from the Property ("Vacate Date"), provided that Seller shall be required to provide Buyer ninety (90) days written notice of Seller's anticipated Vacate Date (the "Vacation Notice") and the Initial Closing shall not take place prior to the expiration of the Vacation Notice and in no event shall take place prior to March 1, 2012. Each closing after the Initial Closing ("Installment Closing") shall occur on the annual anniversary of the Closing Date ("Installment Closing Date") pursuant to Exhibit B Schedule B, except in the event Buyer exercises one or both of the Closing Waivers referred to in Section 2.2.

4. Section 2.2 the Agreement shall be modified so that Buyer only has the option of exercising only one (1) waiver of an Installment Payment and all

references to Closing Waiver in the plural shall be amended to read in the singular.

5. A new section shall be added to Article 2 of the Agreement as follows:

If the closing occurs pursuant to Section 10.1.1(a), the payments identified in Exhibit B, Takedown Schedule A, shall be amended as follows: the amount to be paid on Initial Closing shall be increased to Seventeen Million Six Hundred Thousand Dollars (\$17,600,000), the amount to be paid on the 1st installment shall be increased to Sixteen Million Six Hundred Thousand Dollars (\$16,600,000) and the amount to be paid on the 5th installment shall be decreased to One Million Eight Hundred Thousand Dollars (\$1,800,000). If the closing occurs pursuant to Section 10.1.1(b), the payments identified in Exhibit B, Takedown Schedule B, shall be amended as follows: the amount to be paid on Initial Closing shall be increased to Seventeen Million Six Hundred Thousand Dollars (\$17,600,000), the amount to be paid on the 1st installment shall be increased to Seventeen Million Four Hundred-Thirty Thousand Dollars (\$17,430,000) and the amount to be paid on the 5th installment shall be decreased to Two Million Nine Hundred-Seventy Thousand Dollars (\$2,970,000). EXHIBIT B Takedown Schedule A and EXHIBIT B Takedown Schedule B, as modified herein are attached hereto and incorporated by reference. The above modifications to the payment schedules do not alter the value or amount of land being transferred at any Closing. Such modifications solely compensate Seller for Buyer's one-year extension of its contingency. As modified, the amounts owing will be included in the calculation of aggregate amount of the remaining Installment Payments for the purpose of calculating the Waiver Fee as provided for in Section 2.2 of this Agreement.

6. Except as previously amended and as hereby amended; the terms of the Agreement shall remain in full force and effect.

“SELLER”

KING COUNTY, a municipal corporation and political subdivision of the state of Washington

By _____
Its _____

APPROVED AS TO FORM:

By _____
Its _____
Deputy Prosecuting Attorney

“BUYER”

SUMMIT PLACE 156 LLC
a Washington limited liability company

By: BRNW, Inc., Member

By _____
Brian Ross, President

APPROVED AS TO FORM:

By _____
Counsel to Summit Place 156, L.L.C.

Attachments

EXHIBIT B.
Takedown Schedules

Takedown Schedule A

	Date due	Amount to be paid on Initial and Installment Closing Dates	Value of Property Transferred on Initial and Installment Closing Dates (80% of payment)	Percent of total value of Property Transferred
Initial Closing	X	\$17,600,000	\$12,800,000	25.1%
1 st install	X + 1 year	\$16,600,000	\$12,000,000	23.5%
2 nd install	X + 2 years	\$5,000,000	\$4,000,000	7.9%
3 rd install	X + 3 years	\$5,000,000	\$4,000,000	7.9%
4 th install	X + 4 years	\$5,000,000	\$4,000,000	7.9%
5 th install	X + 5 years	\$1,800,000	\$14,200,000	27.7%
Totals		\$51,000,000	\$51,000,000	100%

Takedown Schedule B

	Date due	Amount to be paid on Initial and Installment Closing Dates	Value of Property Transferred on Initial and Installment Closing Dates (80% of payment)	Percent of total value of Property Transferred
Initial Closing	X	\$17,600,000	\$12,800,000	23.2%
1 st install	X + 1 year	\$17,430,000	\$12,600,000	22.8%
2 nd install	X + 2 years	\$5,500,000	\$4,400,000	8.0%
3 rd install	X + 3 years	\$5,750,000	\$4,600,000	8.3%
4 th install	X + 4 years	\$6,000,000	\$4,800,000	8.7%
5 th install	X + 5 years	\$2,970,000	\$16,050,000	29.0%
Totals		\$55,250,000	\$55,250,000	100%