



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

October 5, 2010

Ordinance 16944

Proposed No. 2010-0472.1

Sponsors Drago

1 AN ORDINANCE authorizing the King County executive
2 to execute an amendment to the purchase and sale
3 agreement dated June 21, 2007, in order to complete the
4 sale of the county-owned property known as the North Half
5 of the Former Kingdome Parking Lot parcel, located in
6 council district 8, to North Lot Development, L.L.C.

7 BE IT ORDAINED BY THE COUNTY COUNCIL OF KING COUNTY:

8 SECTION 1. Findings:

9 A. King County ("the Seller") owns a 3.85 acre (167,513 square feet) parcel of
10 land, commonly known as the North Half of the Former Kingdome Parking Lot ("the
11 Property"), in the city of Seattle, Washington, located adjacent to the King Street Center,
12 the King Street Station, the Weller Street Pedestrian Bridge, and a surface parking lot
13 owned by the Washington State Public Stadium Authority ("the PSA") and operated by
14 First and Goal, Inc. ("FGI"). King County facilities management division is the
15 custodian.

16 B. In accordance with Ordinance 15820, the King County executive executed a
17 purchase and sale agreement ("the Agreement"), dated June 21, 2007, for the sale of the
18 Property to North Lot Development, L.L.C. ("the Buyer").

19 C. Section 5.1 of the Agreement establishes the Buyer's due diligence
20 contingency (as defined in the Agreement) to be satisfied and removed by the Buyer
21 within the Due Diligence Period.

22 D. Section 5.2 of the Agreement establishes the Seller's due diligence
23 contingency (as defined in the Agreement) to be satisfied and removed by the Seller
24 within the Due Diligence Period.

25 E. Section 5.4 of the Agreement establishes a deadline for the parties to agree on
26 the form of the Deed and Covenants (as defined in the Agreement) and the Reserved
27 Easements (as defined in the Agreement).

28 F. The dates for the parties to agree on the forms of the Deed and Covenants and
29 the Reserved Easements were extended by a First Amendment dated September 28, 2007;
30 a Second Amendment dated October 28, 2007; a Third Amendment dated November 20,
31 2007; a Fourth Amendment dated January 31, 2008; a Fifth Amendment dated March 20,
32 2008; a Sixth Amendment dated April 30, 2008; a Seventh Amendment dated December
33 17, 2008; an Eighth Amendment dated June 30, 2009; a Ninth Amendment dated August
34 29, 2009; a Tenth Amendment dated January 26, 2010; and an Eleventh Amendment
35 dated June 28, 2010.

36 G. The dates for certain actions in the Due Diligence Period were extended by a
37 Fifth Amendment dated March 20, 2008; a Sixth Amendment dated April 30, 2008; a
38 Seventh Amendment dated December 17, 2008; and an Eighth Amendment dated June
39 30, 2009.

40 H. In accordance with Ordinance 16555, the King County executive executed an
41 Eighth Amendment dated June 30, 2009, which in addition to extending the dates for the

42 parties to agree on the forms of the Deed and Covenants and the Reserved Easements and
43 for certain actions in the Due Diligence Period, modified certain requirements in the
44 Agreement applicable to Buyer.

45 I. One of Buyer's Contingencies is the environmental status of the Property,
46 which includes obtaining the appropriate concurrences from the Washington state
47 Department of Ecology ("Ecology"), if the Property is found to contain Hazardous
48 Substances as defined in RCW 70.105D.020(10).

49 J. During Buyer's due diligence review, it has been determined that the Property
50 contains Hazardous Substances.

51 K. As a result of the existence of such Hazardous Substances, Buyer's decision to
52 purchase the Property will be subject to its ability to negotiate a Clean-Up Action Plan
53 with Ecology and obtain a Prospective Purchaser Consent Decree from the appropriate
54 court ("the Consent Decree"). Buyer has worked diligently to complete the actions
55 necessary to obtain such a Consent Decree; however, it is highly unlikely that Ecology
56 will complete the tasks necessary for issuance of such a Consent Decree in 2010, which
57 may require a further extension of the Due Diligence Period, because Buyer cannot
58 complete purchase of the property before issuance of the Consent Decree.

59 L. As a result of the development activities of the Buyer, as required in the
60 Agreement, Buyer has obtained an amendment to the Seattle land use code for the
61 property and a Master Use Permit for the project. Buyer has also obtained certain
62 necessary agreements with the PSA.

63 M. As a result of the economic upheaval that has occurred since the Agreement
64 was signed, including collapse of the credit market and high inventories of unsold and,

65 unrented residential units and office space within the city of Seattle and King County,
66 financing for a project of this magnitude may not be available before the expiration of
67 Buyer's Due Diligence Contingency.

68 N. As a result of the economic upheaval in the residential market and the
69 emerging housing policies of the city of Seattle, applicable to this project, the provision
70 of affordable housing as originally contemplated in the Agreement may not be
71 economically feasible and may be better served by providing at least a portion of such
72 housing offsite.

73 O. As a result of the issues relating to the existence of Hazardous Substances on
74 the Property, the emerging housing policies of the city of Seattle and the negotiations
75 with the PSA, the parties have not finalized the forms of the Deed and Covenants and
76 Reserved Easements, which will require a further extension of the dates to agree on the
77 forms.

78 P. It is in the best interests of the citizens of King County, that the Agreement be
79 modified, so that the sale and development of the Property can proceed, safeguarding the
80 benefits articulated in Ordinance 15820.

81 SECTION 2. The King County executive is hereby authorized to execute the

82 Twelfth Amendment to Real Estate Purchase and Sale Agreement substantially in the
83 form of Attachment A to this ordinance.
84

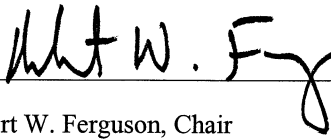
Ordinance 16944 was introduced on 8/30/2010 and passed by the Metropolitan King County Council on 10/4/2010, by the following vote:

Yes: 7 - Ms. Drago, Mr. Phillips, Mr. von Reichbauer, Mr. Gossett,
Ms. Patterson, Ms. Lambert and Mr. Ferguson

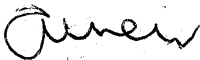
No: 0

Excused: 2 - Ms. Hague and Mr. Dunn

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

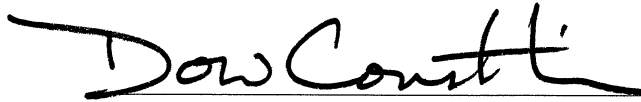

Robert W. Ferguson, Chair

ATTEST:


Anne Noris, Clerk of the Council

RECEIVED
2010 OCT -8 AM 11:36
CLERK
KING COUNTY COUNCIL

APPROVED this 7 day of October, 2010


Dow Constantine, County Executive

Attachments: A. Twelfth Amendment to Real Estate Purchase and Sale Agreement--June 15, 2010

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

THIS TWELFTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT (the "Amendment") is made and entered into effective as of the ____ day of _____, 2010, by and between KING COUNTY, a municipal corporation and political subdivision of the state of Washington ("Seller"), and NORTH LOT DEVELOPMENT, L.L.C., a Delaware limited liability company ("Buyer").

WHEREAS, Seller and Buyer entered into that certain Real Estate Purchase and Sale Agreement dated June 21, 2007 (the "Agreement") which provided for the sale by Seller and the purchase by Buyer of certain real property in Seattle, Washington, which property is more specifically described in the Agreement (the "Property"); and

WHEREAS, the Agreement was amended by a First Amendment dated September 28, 2007; a Second Amendment dated October 28, 2007; a Third Amendment dated November 20, 2007; a Fourth Amendment dated January 31, 2008; a Fifth Amendment dated March 20, 2008; a Sixth Amendment dated April 30, 2008; Seventh Amendment dated December 17, 2008; an Eighth Amendment dated June 30, 2009; a Ninth Amendment dated August 29, 2009; a Tenth Amendment dated January 26, 2010; and an Eleventh Amendment dated June 24, 2010; and

WHEREAS, the City of Seattle has issued a Master Use Permit dated the 16th day of April, 2010, under Permit No. 3009251 for the development of the Property (the "MUP"); and

WHEREAS, market conditions for the Project have shown some improvement over those in effect when the Eighth Amendment was executed, which moved the date of closing until December 16, 2010, but the conditions for the Project are still not sufficient to facilitate the required third party funding; and

WHEREAS, pursuant to the terms of the Eighth Amendment, the final Buyer's Contingency was to be satisfied by the entry of the Consent Decree between Buyer and the Washington State Department of Ecology ("Ecology"), which was also a triggering event for the Closing; and

WHEREAS, based on Ecology's target response times, the parties have agreed it is unlikely that Ecology will be in a position to finalize a Consent Decree until some time in 2011; and

WHEREAS, a condition of the Consent Decree is that it be with a "prospective purchaser," not an owner of the subject property, so Buyer cannot close on the purchase of the Property prior to the entry of the Consent Decree.

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 hereby agree as follows:

1. Section 4.5.2 of the Agreement is hereby amended by changing the first sentence thereof in its entirety to read as follows:

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 100 housing units shall be designated as ownership units.

2. The text of Section 4.5.3.b of the Agreement is hereby deleted in its entirety and replaced with the following: "

If the development includes Affordable Rental Units, the units must be available to households earning no more than 70% of the annual median income for King County.

3. A new provision shall be added to Section 4.5.3, which will be subsection g. to read as follows:

g. The Project is currently qualified under SMC 23.49.181 and under the MUP for bonus floor area based on the provision of affordable housing on the Property. If in the future, under the Seattle Municipal Code and through amendment of the MUP, the City of Seattle ("City") approves the Project for bonus floor area based on some or all of the affordable housing being located outside of the Property in a neighborhood adjacent to the Project, then a portion of the Affordable Housing required by this Agreement may be located on the off-site

property or properties as approved by the City, provided that the following conditions are met:

(i) No more than seventy (70) of the Affordable Housing Units required by this Agreement may be located outside the Property; provided that if the Buyer presents an alternative proposal, which is approved by the King County Executive, the number of Affordable Housing Units located outside the Property may be increased to a number approved by said King County Executive;

(ii) Notwithstanding the foregoing, the number of Affordable Housing Units that may be located outside the Property shall not exceed the number of such units approved by the City;

(iii) Each Affordable Housing Unit that is located outside the Property must be a new unit that qualifies as affordable housing under this Agreement and under SMC 23.49.181 and the MUP for bonus floor area, and must be subject to all the requirements of this Agreement, SMC 23.49.181 and the MUP for such affordable housing;

(iv) The Affordable Housing Units developed by Buyer on the Property and outside the Property must comply with all the requirements for Affordable Housing in this Agreement, including without limitation the total number of required Affordable Housing Units; and, in addition, any Affordable Rental Unit developed outside the Property must be available to households earning no more than 60% of the annual median income for King County; and

(v) Prior to applying for a building permit for a structure outside the Property that will include Affordable Housing Units, Buyer and the owner of the off-site property on which the structure is located shall execute and record a restrictive covenant agreement, deed of trust and/or regulatory agreement in a form acceptable to the County that (a) commits to provide the specified number and type of Affordable Housing Units on the off-site parcel, (b) provides remedies for failure to provide

the Affordable Housing Units, (c) includes terms and conditions that are consistent with those used by the County when it subsidizes the development of affordable housing, and (d) runs with the land to bind successors and assigns.

4. Section 4.5.11 of the Agreement is hereby amended by changing the second sentence thereof in its entirety to read as follows:

Buyer shall complete construction of the Project no later than the date of expiration of the MUP.

5. Section 5.3 is hereby amended by adding a new paragraph thereto to read as follows:

In addition to the foregoing, Buyer may extend the Due Diligence period for a period not to exceed one (1) year from December 16, 2010; provided, Buyer (i) gives Seller notice of such extension not later than December 1, 2010; and (ii) Buyer converts the \$500,000.00 Earnest Money Note into cash, has made both \$100,000.00 extension payments, as provided above, and deposits another \$300,000.00 in cash into escrow. The total of such sums equaling \$1 million shall delivered to Seller and shall be nonrefundable, except for a Default by Seller, but shall be credited against the Purchase Price.

6. The text of Section 10.1 of the Agreement, as amended by the Eighth Amendment is hereby deleted in its entirety and replaced with the following:

The Closing shall take place on the earlier of (i) the date selected by the parties after Buyer and Seller remove or waive all of Buyer's and Seller's Contingencies as the same may be extended as provided in Section 5.3, or December 16, 2010; provided that if Buyer extends the Due Diligence period as provided in Section 5.3, the Closing shall take place not later than December 16, 2011.

7. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed, shall be deemed an original and all of which taken together shall constitute one and the same agreement.

8. 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 _____
Deputy Prosecuting Attorney

“BUYER”

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

By: Daniels Development Co., LLC, Manager

By _____
Kevin D. Daniels, Manager

APPROVED AS TO FORM:

By _____
Counsel to North Lot Development, L.L.C.