

RESOLUTION NO. 07-421

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
RATIFYING THE AGREEMENT WITH BLACK DIAMOND
PROJECT TO PURCHASE REAL PROPERTY FOR CITY
OFFICE SPACE

WHEREAS, the City is in need of additional office space in order to accommodate the design review team and other personnel that will be necessary to process the anticipated master planned development applications;

WHEREAS, the City has negotiated a Purchase and Sale Agreement with Black Diamond Project for the purchase of real property identified as King County Assessor's Parcel Number 1121069092 (the "Agreement"). A copy of the executed Agreement is attached hereto as Exhibit A and by reference incorporated herein; and

WHEREAS, paragraph 13.9.2 of the Agreement requires the City Council ratification; and

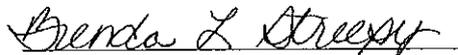
WHEREAS, the Council has reviewed the Agreement and finds that it is in the best interests of the City and its citizens to ratify the Agreement; now, therefore

BE IT RESOLVED that the City Council hereby ratifies the Agreement with Black Diamond Partners attached hereto as Exhibit A and authorizes the Mayor, on behalf of the City, to pay the amounts necessary to acquire the property in accordance with the Agreement.

ADOPTED by the City Council on February 1, 2007 at an open public meeting.


Howard Botts, Mayor

Attest:


Brenda L. Streepy, City Clerk

REAL PROPERTY PURCHASE AND SALE AGREEMENT

1. Date and Parties.

1.1 This Agreement ("PSA"), for reference purposes only, is dated the _____ day of January, 2007, and is entered into by and between Black Diamond Project, a Washington General Partnership, hereinafter referred to as "Seller", and the City of Black Diamond, a municipal corporation, and or assigns, hereinafter referred to as "Buyer". The PSA "Effective Date" shall be the date the PSA is ratified by the Black Diamond City Council, which is tentatively scheduled for February 1, 2007.

2. Subject Property.

2.1 Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, approximately two acres of property located in Black Diamond, King County, Washington, the King County Assessor's parcel number 1121069092; and the legal description for which are attached hereto as Exhibit A (referred to herein as the "Subject Property").

2.2 Buyer and Seller hereby authorize and direct Closing Agent (defined in section 9 below) to furnish and substitute for the attached Exhibit "A" a revised legal description as soon as it has been approved by the Title Company and Buyer and Seller if the attached legal description is inaccurate or incomplete.

2.3 The Subject Property includes all of Seller's right, title and interest in and to the Subject Property and any improvements and fixtures located thereon.

3. Purchase Price.

3.1 The purchase price for the Subject Property is Five Hundred Thousand Dollars U.S. (\$500,000.00), including the Earnest Money and any other credits referenced herein, plus \$100,000 worth of Development Rights, as defined in the City of Black Diamond TDR Program ("Purchase Price"). The Development Rights shall be from the Subject Property. The parties will meet to discuss the valuation method for the Development Rights to determine the number that must be retained by the Seller in order to equal the \$100,000 value. Provided, however, the above provision notwithstanding, regardless of valuation, the Buyer will retain at least the number of Development Rights needed to construct the buildings it intends to build on the Subject Property. The Purchase Price, except for the Development Rights, shall be paid all cash at Closing, less the Earnest Money and any other appropriate credits referenced herein. The transfer documents for the Development Rights shall be executed at closing.

4. Earnest Money.



Seller



Buyer

4.1 On or before 5:00 P.M. on the day after the Effective Date the Buyer shall tender to Closing Agent a Cashier's Check made payable to Closing Agent in the amount of Five Thousand Dollars, U.S. (\$5,000.00) as and for the Earnest Money. The Earnest Money shall be retained in an interest bearing account until March 15, 2007. If the Buyer has not provided notice, pursuant to the provisions of the Feasibility Contingency provision set forth in Section 6 below, that the agreement is terminated, then the Closing Agent, without further notice, shall release the Earnest Money to the Seller, and it shall be non-refundable but applicable to the Purchase Price.

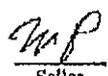
5. Possession. The Buyer shall be entitled to possession upon closing.

6. Buyer's Appraisal, Due Diligence and Environmental Contingencies to Closing.

6.1 This Agreement is contingent upon the Buyer obtaining a level 1 environmental assessment that is to its satisfaction, an appraisal that confirms the value of the Subject Property is at least equal to the Purchase Price, and that the Subject Property can be used by the Buyer for its intended purpose. These contingencies will be deemed waived, unless, prior to 5:00 P.M. on March 15, 2007 Buyer provides Seller written notice that either the level 1 assessment is not acceptable, the appraised value does not at least equal the Purchase Price, or the Subject Property cannot be used for its intended purpose ("Termination Notice"). If the Termination Notice is given, then this agreement shall automatically terminate, and the earnest money refunded to Buyer. If the Termination Notice is not timely given, then the Earnest Money, plus accrued interest, said interest being deemed part of the Earnest Money shall automatically become non-refundable, but applicable to the Purchase Price, and will be immediately released to the Seller. If the Termination Notice is timely given, then the Earnest Money, including accrued interest, but less the Title Insurance policy cancellation charge, if any, referenced in section 7.1 below, shall be released to the Buyer, and this agreement shall automatically be terminated, without any further right or obligation in either party with regards thereto.

6.2 After 5 P.M. on March 15, 2007, there are no contingencies to closing.

6.3 The provisions of paragraph 6.1 notwithstanding, if the due diligence and environmental review are to Buyer's satisfaction, but the appraisal indicates a value of less than the Purchase Price, then, prior to giving the Termination Notice, and thus terminating the Agreement, the parties will meet to discuss the possibility of selling the Subject Property at the appraised value, but allowing the Seller to retain the development rights not needed for Buyer's intended use, so that Seller may recognize additional value by selling those development rights as part of the City of Black Diamond Transfer of Development Rights Program. So long as the Seller is notified of the appraised value deficiency prior to March 15, 2007, and as soon as reasonably possible after the Buyer becomes aware of the deficiency, the March 15, 2007 deadline for giving the Termination Notice shall be extended by 48 hours after the time that the Buyer and Seller meet to discuss the possibility of selling the Subject Property at the appraised value.



Seller



Buyer

6.4 The parties, during the feasibility period, shall meet, either in person or by conference call, to discuss the Development Right valuation process and shall, by addendum to this agreement, set forth the agreed value.

7. Title.

7.1 Title Review. Within 2 days of the Effective Date the Closing Agent, on behalf of the Seller, shall order a preliminary title report for a standard title insurance policy ("Preliminary Title Report") together with legible copies of all the documents referenced in the Schedule B exceptions ("Underlying Documents"). Said policy is to be ordered from Chicago Title Insurance Company, 701 - 5th Avenue, Suite 3400, Seattle, Washington, Unit #4, telephone number (206) 628-3600 ("Title Company"). Buyer shall pay the cost of the Preliminary Title Report, if any, and shall pay any cancellation fee for the report if the sale is not closed. If the Preliminary Title Report contains exceptions, they must be acceptable to Buyer, within Buyer's sole and absolute discretion. Within ten (10) business days after receipt of the Preliminary Title Report and all of the Underlying Documents (whichever occurs last), Buyer shall notify Seller in writing of the exceptions not acceptable to Buyer, if any ("Title Disapproval Notice"). Seller shall then have 5 days in which to notify Buyer of which of the disapproved exceptions it will remove at or prior to closing. If the Buyer does not terminate the Agreement, as authorized in Section 6.1 above, then the Buyer's purchase, and the Seller's conveyance of the Subject Property shall be subject to all exceptions shown in the Preliminary Title Report, except those the Seller has agreed to remove ("Permitted Exceptions").

7.2 Conveyance of Title. At the time of Closing, Seller shall execute and deliver to Buyer a Statutory Warranty Deed conveying fee title to the Subject Property; subject only to Permitted Exceptions as defined in section 7.1. Monetary encumbrances to be discharged by Seller at Closing shall be paid from Seller's proceeds.

7.3 Title Insurance Policy. At Closing, or as soon as practical thereafter, Seller shall cause the Title Company to issue to Buyer a standard coverage Owner's Policy of Title Insurance (current form) insuring Buyer in the amount of the Purchase Price against any loss or damage by reason of defect in Seller's title to the Property, other than the Permitted Exceptions as determined hereunder (the "Policy"). Buyer may, at its sole expense, including the cost of survey, request an extended ALTA Owner's Policy of Title Insurance.

8. Subject Property Inspections.

8.1 Right of Entry for Feasibility Analysis. Buyer, its agents, employees, assigns and designees shall be entitled to enter upon the Subject Property to conduct investigations and studies including, without limitation, soil, engineering and other studies and investigations. Buyer's investigations shall be conducted at Buyer's sole cost and expense. Buyer shall indemnify Seller from any and all costs and claims for costs of



Seller



Buyer

work or materials related to Buyer's soil, engineering and other studies and investigations including, without limitation, materialmen's and/or mechanic's liens and any claims of personal injuries or causes of action that may arise as a result of Buyer's entry on the Subject Property as set forth herein, except insofar as any such claims arise from Seller's acts or omissions. This indemnity shall include the Seller's reasonable attorneys' fees incurred in enforcing the provisions of this agreement, whether or not suit is instituted.

8.2 The Buyer shall not allow anyone that may be entitled to file a lien upon the Subject Property for work to be performed as part of Buyer's due diligence, development work, or to provide an extended ALTA title insurance policy, to enter upon the Subject Property or perform such work without first providing to Seller the original of a duly executed lien waiver. The form of the lien waiver is attached hereto as Exhibit F.

8.3 Buyer shall provide Seller with copies of all contracts, documents, plans, reports, etc. as they are generated prior to Closing. In the event Buyer does not close on the Subject Property, through no fault of the Seller, regardless of whether or not the Buyer has waived the contingency, the Buyer shall immediately transfer ownership, at no cost, of all original due diligence documents, plans, reports, etc. to Seller.

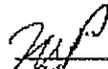
9. Closing of Sale. Closing shall occur no later than March 30, 2007. The sale shall be closed on March 30, 2007 ("Closing Date"), at the office of McGavick Graves, P.S. ("Closing Agent"), 1102 Broadway, Suite 500, Tacoma, Washington. Telephone number (253) 627-1181, fax number (253) 627-2247. The Purchaser and Seller will, on demand, deposit in escrow all instructions, signed originals of appropriate documents, and all moneys that are necessary to complete the purchase in accordance with this PSA. Deposit of moneys is not complete until Closing Agent has been provided with collected funds. Closing shall be deemed to have occurred when all documents are recorded and the sale proceeds are available to Seller.

10. Seller's Warranties. The Seller makes no warranties with regards to the Subject Property, other than those contained in the conveyance deed to the Buyer. The Buyer should conduct its own feasibility analysis to determine the Subject Property's condition.

11. Default and Remedies.

11.1 Notice of Default and Cure Period. If either party deems the other in default of this Agreement, that party shall deliver written notice of the default to the other which shall be delivered as set forth in Section 13. The notice must be delivered as a condition precedent to exercising its other remedies. The party receiving the notice shall have ten (10) business days in which to cure the default. If the default is not cured within ten (10) business days of notice, the party declaring the default may pursue its remedies as set forth below.

11.2 Seller's Remedies. If, the Buyer does not terminate the Agreement prior to March 15, 2007, and the transaction fails to close other than from default of the Seller,


Seller


Buyer

the earnest money, along with ownership of all permit applications, studies, and all other documents prepared by the Buyer, or at Buyer's direction, related to the Subject Property, shall be forfeited to the Seller as liquidated damages. All Seller's Documents in Buyer's possession shall also be returned to Seller at no cost to Seller.



Buyer initials

Seller initials

11.3 **Buyer's Remedies.** If the transaction fails to close due to default or breach of a warranty by Seller, Buyer shall have all rights and remedies provided by law, including the right to specifically enforce this Agreement and/or to receive, immediately upon demand, the Earnest Money Deposit and any other payments made by Buyer to Seller and to pursue any other remedies available to recover any and all of Buyer's damages.

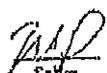
12. **Payment of Real Estate Brokerage Commission.** Buyer and Seller acknowledge that no brokerage companies are involved in negotiations of this transaction. Seller shall indemnify, defend and hold Buyer harmless from and against any claims, fees (including attorneys' fees and costs) or costs arising out of any claim made by any other broker or agent claiming a commission is due by or through Seller. Buyer shall indemnify, defend and hold Seller harmless from and against any claims, fees (including attorneys' fees and costs) or costs arising out of any claim made by any other broker or agent claiming a commission is due by or through Buyer. The indemnification set forth in this Section shall survive Closing or earlier termination of this Agreement.

13. **Miscellaneous.**

13.1 **Notice.** Any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or successfully transmitted by facsimile transmission, or when actually received after being deposited in the United States Mail in registered or certified form, return receipt requested, addressed as follows:

To Buyer: City Administrator
P.O. Box 599
Black Diamond, WA 98010
Fax: (360) 886-2592

With a copy to: Loren D. Combs
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402

 Seller
 Buyer

Fax: (253) 627-2247

To Seller:

Fax: () _____

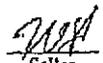
or to such other single address and person as either party may designate to the other by like written notice.

13.2 Entire Agreement. The parties have negotiated in good faith with regard to each and every term of this Agreement. This Agreement shall be construed to accomplish the intent and purpose set forth herein. This Agreement (together with attachments) contains the entire understanding between the parties and supersedes any prior understandings and agreements between them respecting the subject matter hereof. There are no other representations, agreements, arrangements or understandings, oral or written, between and among the parties hereto or any of them, relating to the subject matter of this Agreement. No amendment of or supplement to this Agreement shall be valid or effective unless made in writing and executed by the parties hereto.

13.3 Equal Bargaining. This Agreement has been drafted by the mutual efforts of the parties. Seller and Buyer acknowledge and represent that each of them is fully competent to negotiate and to enter into this Agreement with the other and that they have freely entered into it with adequate opportunity for prior consultation with independent legal counsel of their choosing. All terms and provisions shall be given their fair and reasonable interpretation without reference to which party or its counsel drafted any particular term or provision in question and shall be presumed to be a mutual draft of the parties' intent and is not to be construed in favor of any party as a non-drafter.

13.4 Attorneys' Fees. In the event of litigation or arbitration between the parties hereto, or if either party should file bankruptcy or avail itself of any court in connection with this Agreement, the prevailing party shall be entitled to reimbursement for all its costs and attorneys' fees actually incurred from the non-prevailing party.

13.5 Dispute Resolution. The parties desire to avoid the expense and delay inherent in the judicial process. In the event of a dispute arising under this Agreement, or if the parties are unable to agree on the meaning of this Agreement or any portion of it, the parties agree to submit such dispute to binding arbitration by the American Arbitration Association, Judicial Arbitration and Mediation Services ("JAMS"), or such other arbitrator or arbitration service as mutually agreed to by the parties. The arbitration shall be conducted according to the rules of the arbitration service selected. The arbitrator shall award attorney fees and costs to the substantially prevailing party. The decision of the arbitrator shall be binding on the parties and may be entered as a final judgment in a court of competent jurisdiction.

 Seller Buyer

13.6 Limits on Obligation to Arbitrate/Venue. In the event either party wishes to file a Lis Pendens, enforce its remedy of specific performance, seek injunctive or other primarily equitable relief or cannot obtain jurisdiction over a necessary or important party for arbitration, the party may instead initiate an action in Pierce County Superior Court.

13.7 Binding. This Agreement and the terms, covenants, benefits and duties set forth herein shall inure to the benefit of and be binding upon the parties, their heirs, successors, legal representatives and assigns of each party.

13.8 Survival. All warranties, representations, covenants, indemnifications, obligations and agreements contained in or arising out of this Agreement shall survive the Closing and the conveyance of the Property hereunder and any and all performance hereunder and shall not merge. All warranties and representations shall be effective regardless of any investigation made or which could have been made. The special conditions of sale as set forth in paragraph 6.6 shall be deemed to survive closing and may be enforced by Seller as set-forth herein.

13.9 Approval.

13.9.1 The signator for Seller, at the time he signs this PSA, shall also provide proof, by appropriate business document, that he is authorized to execute the document on behalf of the Seller entity.

13.9.2 The signator for Buyer is the Mayor or Mayor ProTem. His signature is required to be authorized by the Black Diamond City Council by Resolution, adopted at an open public meeting held in accordance with the Open Meetings Act. This Agreement shall be presented to the Black Diamond City Council for approval at its next regularly scheduled Council Meeting after the Seller provides to Buyer duplicate executed originals of the PSA. The presentation is currently scheduled for February 1, 2007.

14. Counterparts. This Agreement may be signed in counterparts. Each signed counterpart shall be deemed an original and all counterparts together shall constitute one and the same agreement.

15. Facsimile. Facsimile transmission of any signed original document shall be the same as delivery of the original. At the request of either party, the parties will confirm facsimile transmission by signing an original document.

16. No Third Party Beneficiaries. The Agreement and each and every provision thereof are for the exclusive benefit of the Seller and Buyer and not for the benefit of any third party.


Seller


Buyer

17. Representation. Seller acknowledges that McGavick Graves, P.S. has not represented Seller in the preparation of this Purchase and Sale Agreement and cannot give Seller legal advice. Seller acknowledges that Loren D. Combs is the City Attorney for Buyer and McGavick Graves, P.S. provides legal services to Buyer. Notwithstanding, Seller agrees to have McGavick Graves, P.S. serve as Closing Agent. Purchaser acknowledges that it has been advised to seek its own legal counsel on the meaning and effect of the terms and conditions of this PSA.

18. Time is of the Essence. Time is of the essence as to each provision of this PSA. This provision has been negotiated by the parties and is material and substantial consideration.

19. No Waiver. No waiver of any default under this Agreement shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Agreement shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement of exercise of any right, privilege or option hereunder.

20. Captions. The captions of this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

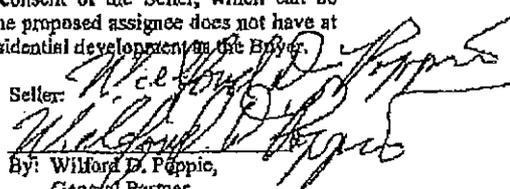
21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

22. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

23. Assignment of Agreement. Buyer may not assign its rights and/or obligations under this Agreement without the prior written consent of the Seller, which can be withheld if, in the Seller's reasonable discretion, the proposed assignee does not have at least the same financial strength and expertise in residential development as the Buyer.

Buyer:

By: Howard Botts
Mayor
Black Diamond City Hall
P.O. Box 599
Black Diamond, WA
Date signed: 1-31-07

Seller:

By: Wilford D. Pappie,
General Partner
Black Diamond Project

Date signed: 1/30/07

Attest:

 Seller
 Buyer

Branda Stroczy
City Clerk

Approved as to Form:

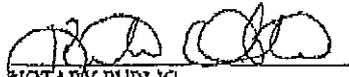
Loren D. Combs
City Attorney

STATE OF ARIZONA)
County of Maricopa)

§5.

I certify that I know or have satisfactory evidence that Wilford D. Poppie is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath, stated that he was authorized to execute the instrument on behalf of Black Diamond Project, and acknowledged it as to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: January 30th, 2007.

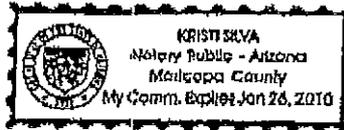


NOTARY PUBLIC

Print Name: Kristi Skva

My appointment expires: 1/26/2010

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Purchase and Sale Agreement
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Seller



Buyer