

RESOLUTION NO. 1460

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT WITH KS FAMILY, LLC

WHEREAS, FMC 20.25.027 provides for the issuance of traffic impact fees for certain redevelopment in cases involving the demolition of business structures that have exceeded their useful life, for redevelopment with uses that support tourism, civic uses or businesses that create living wage jobs that will strengthen the City's business community, promote tourism and help stimulate economic growth; and

WHEREAS, FMC 20.25.027(c) authorizes the City Council to provide traffic impact fee credit for such redevelopment that will occur more than two years from the time the credit is given provided the conditions set forth therein are met and the City and the owner enter into a development agreement; and

WHEREAS, KS Family, LLC owns the property commonly known as 3520 Pacific Highway East, Fife, WA and identified as Pierce County Assessor's Parcel No. 0320111049, on which is located a motel called the Hometel; and

WHEREAS, City Staff and KS Family, LLC have negotiated a development agreement the purpose of which is to provide for a traffic impact fee credit, as authorized by Fife Municipal Code Section 20.25.027 (C), to specify the terms and conditions under which it can be utilized, and to provide for clarity on the number of ERU's to which the Property is vested for purposes of the applicability of Fife Municipal Code sections 13.04.095(I), and 13.08.465(D); and

WHEREAS, the City Council held a public hearing on this matter on February 28, 2012 at Fife City Hall Council Chambers, 5411 23rd Street East, Fife, Washington; now therefore

BE IT RESOLVED that the Council makes the following findings:

1. There is an existing use and structure on tax parcel no. 0320111049 (the Hometel) that the Council finds is not conducive to promoting economic development within the City;
2. The peak hour trips for which credit will be given will not be greater than the number of peak hour trips that were generated by the existing use on the tax parcel;

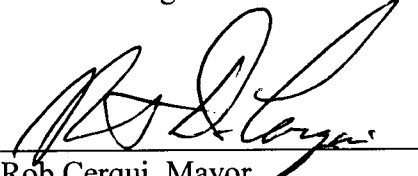
3. The credit will only be used on the same tax parcel, or a larger parcel that includes the same property upon which the use and structure identified in subsection (D)(1) above is located;

4. The credit is to be used for hotel and convention center which is a use that the City Council identifies is encouraged to locate in the City in order to promote economic development and/or tourism; and


5. The proposed development agreement is consistent with the City's development regulations.

BE IT FURTHER RESOLVED that the Council hereby authorizes the City Manager to execute a Development Agreement with KS FAMILY, LLC in regards to the site commonly referred to as the Hometel, in the form attached hereto as Exhibit A.

ADOPTED by the City Council at an open public meeting held on the 10th day of July, 2012.


Rob Cerqui, Mayor

Attest:


Carol Etgen, City Clerk

**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF FIFE
AND
KS FAMILY, LLC**

1. **DATE AND PARTIES.**

1.1 This document ("Development Agreement"), for references purposes only, is dated the ____ day of July, 2012 ("Agreement Date") and is entered into by and between the City of Fife, Washington, a municipal corporation under the laws of the State of Washington (the "City"); and KS Family, LLC, a Washington Limited Liability Company ("KS"). The City and KS are sometimes referred to herein individually as "Party" and collectively as "Parties."

2. **AUTHORITY.**

2.1 The City is entering into this Development Agreement under the authority and power given to it by the general laws and the constitution of the state of Washington and Chapter 36.70B of the Revised Code of Washington relating to development agreements, and City Resolution No. 1459 that authorized the City Manager to sign this Development Agreement.

3. **SUBJECT PROPERTY.**

3.1 The real property that is subject to the terms and conditions of this Development Agreement is commonly known as 3520 Pacific Highway East, Fife, Washington, identified by Pierce County Assessor's parcel number 0320111049, and legally described in Exhibit A attached hereto and by reference incorporated herein and shall be referred to as the "Property."

4. **DEVELOPMENT AGREEMENT INTENT AND PURPOSE.**

4.1 The intent of this Development Agreement is to: (1) further the City goals and policies in regards to commercial development within the City which have a significant impact on the City's transportation network; (2) support economic development within the City that will create living wage jobs, encourage tourism, and also be consistent with the City's vision and goals; and (3) encourage the demolition of business structures that have exceeded their useful life and that will be replaced by a structure and use that will strengthen the City's business community.

4.2 The purpose of this Development Agreement is to provide for a traffic impact fee credit, as authorized by Fife Municipal Code Section 20.25.027 (C), to specify the terms and conditions under which it can be utilized, and to provide for clarity on the number of ERU's to which the Property is vested for purposes of the applicability of Fife Municipal Code sections 13.04.095(I), and 13.08.465(D).

5. **DEVELOPMENT AGREEMENT TERM.**

5.1 The Development Agreement term shall commence on the 11th day of July, 2012, ("Development Term Commencement Date") and shall end at 5 PM on the 10th day of July,

2026, unless earlier terminated pursuant to the provisions of section 6. This period shall be known as the Development Agreement Term.

5.2 The traffic impact fee credits referenced in section 7 and the credit for equivalent residential units referenced in section 8 must be utilized within the Development Agreement Term. Any credits not used in accordance with the terms of the Development Agreement within the Development Agreement Term shall automatically terminate, without further notice or action, at the end of the Development Agreement Term.

6. **EARLY TERMINATION OF THE AGREEMENT TERM.**

6.1 If a complete development application, including building permit for a three diamond or higher AAA rated¹ hotel and convention center having at least 100 hotel rooms and at least three meeting rooms, one of which rooms is at least 1800 square feet, and another of which rooms is at least 800 square feet ("Hotel and Convention Center"), is not submitted to the City before 4 PM on July 31, 2022, the Development Agreement Term shall terminate at 4:00 PM on July 31, 2022. The application must comply with all applicable City codes and regulations in effect on the date the complete application is submitted. If the final certificate of occupancy for the improvements to be constructed under the complete development application is not issued before 4 PM on March 31, 2026, then there shall be no credits for water, sewer or traffic as otherwise authorized by the Development Agreement, and the full amount of the applicable fees in effect at that time must be paid prior to the issuance of the certificate of occupancy.

6.2 The motel currently operating on the Property shall cease doing business and surrender its business license before 4 PM on July 11, 2012. "Ceasing to do business" is defined as no longer operating any type of lodging facility on the Property, all tenants residing in the motel having vacated the premises, and the building being secured to discourage unlawful entry. If the motel has not ceased doing business and the business license surrendered to the City before 4 PM on July 11, 2012, then the Development Agreement Term shall terminate at 4:00 PM on July 11, 2012.

6.3 The structures to be demolished, as shown on the plans submitted to the City under City application number SEPA 2010-0009, and dated October 27, 2010, shall be demolished and clean up completed in accordance with the City conditions of approval, on or before 4 PM on the 120th day after the City's SEPA determination has been issued. If said structure has not be demolished and the clean up completed on or before that time, then at 4 PM on the 120th day after the City's SEPA determination is issued the Development Agreement Term shall terminate.

7. **TRAFFIC IMPACT FEE CREDITS.**

7.1 ~~KCS~~ shall be entitled to credit equal to 90 peak hour trips toward any Traffic Impact Fees that the City may impose as a condition of any development of a Hotel and

¹ If AAA has discontinued its rating service at the time the building permit is submitted, then an equivalent rating from the largest independent lodging rating service in the U.S. at the time shall be required

Convention Center as described in paragraph 6.1 on the Property. If, during the Development Agreement Term, the City changes its method of calculating Traffic Impact Fees so that it no longer uses peak hour trips, then the credit to be given shall be equal to the amount of credit that would be given under the modified system for a hotel with 90 transient rooms.

8. **SEWER AND WATER EQUIVALENT RESIDENTIAL UNITS (ERU) CREDITS.**

8.1 ^{KCS} ~~KS~~ shall be entitled to credit for 90 ERU's for purposes of calculating both the water and sanitary sewer general facility charge to be applied to any development of a Hotel and Convention Center as described in paragraph 6.1 on the Property.

9. **RESERVATION OF POLICE POWER TO MODIFY OR OTHERWISE TERMINATE THE DEVELOPMENT AGREEMENT.**

9.1 The City reserves the right for the City Council to modify a condition of the Development Agreement if the City Council determines its modification is necessary as a result of a serious threat to the public health and safety, and the modification is the minimum necessary, both in content and duration, to alleviate the adverse consequences to the public health and safety that would be caused by the serious threat. Provided, no modification shall occur until consultation with KS has occurred in order to seek its input on how to modify the Development Agreement so as to address the serious threat to the public health and safety, while minimizing the impact on the Property development and the Development Agreement's intent and purpose. The Parties agree to use the Development Agreement's dispute resolution process regarding any dispute over the appropriate way to modify the vested rights of KS. If the modification is mandated by governmental action other than the City's, then the City agrees that KS shall have the right, at its sole discretion and expense, to contest the governmental action.

10. **AMENDMENTS.**

10.1 The Development Agreement may be modified, including termination of the Agreement or any part thereof, at any time, but only by the Parties by written agreement. If a particular process is called out in the agreement relative to modifying or terminating the Development Agreement, such as in the case of a serious threat to public health and safety as set forth in paragraph 9.1, then that process shall be followed.

11. **DESIGNATED REPRESENTATIVE FOR EACH PARTY.**

11.1 Representative of City. The City Manager shall be the designated person with overall responsibility in connection with administering the Development Agreement on behalf of the City. The City Manager may delegate this responsibility to a City staff member. Such delegation shall take effect only after the City Manager has given written notice to KS's Representative (as defined by paragraph 11.2) in accordance with paragraph 12.

11.2 Representative of KS. Kevin Carl shall be the designated person with overall responsibility in connection with administering the Development Agreement on behalf of KS, who may delegate that responsibility from time to time to another individual. Such delegation

shall take effect only after Kevin Carl has given written notice to the City's Representative (as defined by paragraph 11.1) in accordance with paragraph 12.

11.3 The designated representatives shall meet on an as needed basis to discuss: 1) the development of the Property; 2) the order of construction and timing for necessary improvements; 3) the preparation and implementation of other agreements necessary to carry out the intent and purpose of the Development Agreement; and 4) such other matters as are deemed by the other party to be matters that need to be discussed in order to assist in the timely and orderly development of the Property.

12. **NOTICES.**

12.1 Any notice or communication required by this Development Agreement between the City and KS must be in writing, and may be given either personally, electronically with evidence of receipt, or by express delivery service, return receipt requested. If given personally, or by registered or certified mail, such notice or communication shall be deemed to have been given and received upon actual receipt. If delivery is made electronically, either by e-mail or facsimile transmission, a notice shall be deemed to have been given when delivered to the party to whom it is addressed, and there is electronic confirmation that it was received. Such notices or communications shall be given to the Parties at their addresses set forth below:

To: City:

David K. Zabell
City Manager
City of Fife
5411 23rd Street East
Fife, WA 98424

With a copy to:

Loren D. Combs
VSI Law Group, PLLC
3600 Port of Tacoma Road, Suite 311
Tacoma, WA 98424
Facsimile: (253) 922-5848
Email: ldc@vsilawgroup.com

To: KS:

Kevin Carl
3525 Pacific Highway East
Fife, WA 98424
Facsimile: 253-284-6636
Email: tonyc@fifervcenter.com

With a copy to:

William T. Lynn
Gordon Thomas
1201 Pacific Avenue, Suite 2100

Tacoma, WA 98402
Facsimile: (253) 620-6565
Email: lynnw@gth-law.com

12.2 Either party, by giving ten (10) days notice, may at any time change its contact information by sending its new contact information to the other party in the same manner as is provided for sending the other party notice under the provisions of this Agreement.

13. **BINDING EFFECT; ASSIGNABILITY.**

13.1 This Development Agreement shall run with the land and shall be binding on the Parties hereto; their heirs, successors, and assigns. The credits referenced in the Development Agreement can only be used on the Property and are not transferrable to any other property.

14. **NO THIRD PARTY BENEFICIARIES.**

14.1 This Development Agreement is between KS and the City. This Development Agreement is not intended to, and shall not be construed as benefitting third-parties.

15. **EXHIBITS.**

15.1 The only exhibit to the Development Agreement is the legal description for the Property, which is attached as Exhibit A.

16. **NO PRESUMPTION OF DRAFTSMENSHIP BY EITHER PARTY.**

16.1 The Development Agreement has been reviewed and revised by both parties and has been the subject of a public hearing. For purposes of interpretation of any of its provisions there shall be no presumption of draftsmanship of any provision of the Development Agreement.

17. **CAPTIONS.**

17.1 The captions are for ease of reference and are not considered substantive provisions of the Development Agreement, nor shall they be given any weight in determining the interpretation of any provision of the Development Agreement.

18. **SEVERABILITY.**

18.1 If any provision of the Development Agreement is determined to be unenforceable or invalid pursuant to a final decree or judgment by a court of law with jurisdiction, then the remainder of this Development Agreement not decreed or adjudged unenforceable or invalid shall remain unaffected and in full force and effect, subject to the provisions of paragraph 18.2.

18.2 If any provision or provisions of the Development Agreement are determined to be unenforceable, then the Parties agree to negotiate in good faith a substitute provision or provisions that would accomplish the intent and purpose of the invalid provision in a method and manner that would be legal, subject to any legal proceeding, such as a public hearing, that may be required by law prior to adopting any changes to a Development Agreement.

18.3 In the event of any administrative, legal or equitable action or other proceeding instituted by any person not a party to this Development Agreement challenging the validity of any provision of this Development Agreement, or any subsequent action taken by the parties to implement the Development Agreement conditions, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment, including all appeals. Each Party shall select its own legal counsel and bear its own costs in defending such action or proceeding.

19. **DEVELOPMENT AGREEMENT TO BE RECORDED.**

19.1 The Development Agreement shall be recorded, once executed by both Parties, with the Pierce County Auditor's office, as required by RCW 36.70B190.

20. **CHOICE OF LAW.**

20.1 The Development Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party that the Development Agreement shall be governed by the laws of the State of Washington both as to interpretation and performance, and venue for any dispute shall be in the Pierce County Superior Court.

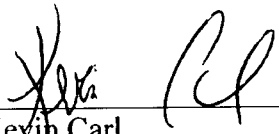
21. **COOPERATION IN EXECUTION OF DOCUMENTS.**

21.1 The Parties agree to properly and promptly execute and deliver any and all additional documents that may be necessary to render this Development Agreement practically effective. This paragraph shall not require the execution of any document that expands, alters or in any way changes the terms of this Development Agreement.

CITY OF FIFE:

KS FAMILY, LLC

By: _____
David K. Zabell
City Manager

By:  _____
Kevin Carl
Its: Managing Member

ATTEST:

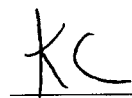
APPROVED AS TO FORM:

By: _____
Carol Etgen
City Clerk

By: _____
William T. Lynn
Its: Attorney

APPROVED AS TO FORM:

By: _____
Loren D. Combs, City Attorney

City  _____
KS

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that David K. Zabell 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 and acknowledged it as the City Manager for the City of Fife, Washington, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was acting as said officer of the municipal corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

Dated: July ____, 2012

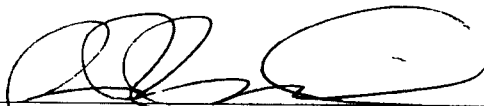
NOTARY PUBLIC in and for the State of Washington
Residing at: _____
My Commission Expires: _____

(Use this space for notarial stamp/seal)

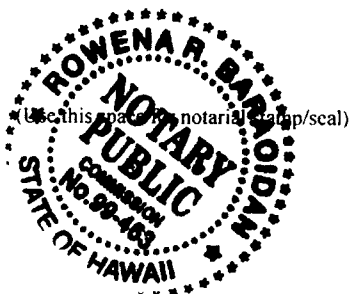
Hawaii
STATE OF ~~WASHINGTON~~)
Maui) ss.
COUNTY OF ~~PIERCE~~)

I certify that I know or have satisfactory evidence that Kevin Carl is the person who appeared before me, and ~~he~~she acknowledged that ~~he~~she signed this instrument, on oath stated that ~~he~~she was authorized to execute the instrument and acknowledged it as the managing member of KS Family, LLC and acknowledged it to be the free and voluntary act of such company for the uses and purposes mentioned in the instrument.

June
Dated: *July 29*, 2012



NOTARY PUBLIC in and for the State of ~~Washington~~ *Hawaii*
Residing at: *Lahaina, Maui, Hawaii*
My Commission Expires: **ROWENA R. BARAGIBAN, NOTARY PUBLIC**
MY COMMISSION EXPIRES: OCT. 3, 2015



City *KC*
KS

ROSEMARY R. BARAIDAN, NOTARY PUBLIC
MY COMMISSION EXPIRES OCT 3 2017



EXHIBIT A

LEGAL DESCRIPTION

Beginning at the northeast corner of the west 30 acres of the northeast quarter of the northeast quarter of Section 11, Township 20 North, Range 3 East, W.M., in Pierce County, Washington; Thence south along the east line of said west 30 acres to the north line of property condemned by United States of American for PSH #1 by U.S. D.C. Cause No. 2549;

Thence westerly and northerly along said north line of said condemned property and the north line of property conveyed to the State of Washington for PSH #1 by deed recorded under Recording Number 1856305 to a point 322.50 feet south of the north line of said northeast quarter of the northeast quarter;

Thence easterly on a line parallel with the north line of said northwest quarter of the northeast quarter, a distance of approximately 237.83 feet to the easterly line of the west 15 acres of the northeast quarter of the northeast quarter of said Section 11;

Thence north along said east line of the west 15 acres a distance of approximately 322.60 feet to the north line of said northeast quarter of the northeast quarter of said Section 11;

Thence easterly along said north line, a distance of approximately 495 feet to the point of beginning; EXCEPT the following described property:

Beginning at the northwest corner of the northeast quarter of the northeast quarter of Section 11, Township 20 North Range 3 East, W.M., in Pierce County, Washington;

Thence south $88^{\circ}02'46''$ east along the north line of said subdivision a distance of 332.10 feet;

Thence south $00^{\circ}55'45''$ west, parallel to the east line of the west 15 acres of said subdivision a distance of 137.55 feet;

Thence south $88^{\circ}02'46''$ east parallel to the north line of said subdivision, a distance of 163.00 feet to the easterly line of the west 15 acres of said subdivision and the TRUE POINT OF BEGINNING;

Thence continuing south $88^{\circ}02'46''$ east a distance of 65.00 feet;

Thence south $03^{\circ}39'20''$ west a distance of 329.63 feet to the northerly line of the property condemned by United States of America for PSH #1 by U.S.D.C. Cause No. 2549;

Thence westerly and northerly along said north line of said condemned property and the north line of property conveyed to the State of Washington for PSH #1 by deed recorded under Recording Number 1896305, the following three courses and distances;

North $76^{\circ}51'45''$ west, 117.35 feet;

Thence around a curve to the right, the center of which bears north $13^{\circ}08'15''$ east having a central angle of $39^{\circ}17'30''$, a radius of 309.00 feet, an arc distance of 212.11 feet;

Thence north $37^{\circ}34'15''$ west along the northeast right of way margin a distance of 4.21 feet to an extension of a line 322.50 feet south of a parallel to the north line of said subdivision;

Thence south $88^{\circ}02'46''$ east along a line 322.50 feet south of and parallel to the north line of said subdivision, a distance of 237.83 feet to the east line of the west 15 acres of said subdivision;

Thence north $00^{\circ}55'45''$ east along the east line of the west 15 acres of said subdivision, 185.00 feet to the TRUE POINT OF BEGINNING;

TOGETHER WITH an easement for ingress and egress as contained in reservation of easement, recorded April 1, 1992 under Recording Number 9204010552, in Pierce County, Washington.



PURCHASE AND SALE AGREEMENT

1. **Date and Parties.** THIS PURCHASE AND SALE AGREEMENT ("AGREEMENT"), is dated, for reference purposes only, the 11th day of ~~June~~ July, 2012, and is made and entered into by and between the Stephen and Helen Franich Living Trust ("Franich") and City of Fife, a Washington municipal corporation ("City").

2. **Property to be Conveyed.**

2.1 Franich is the owner of the real estate located in Pierce County, Washington identified as Pierce County Tax Parcel No. 0420071705 and legally described as follows (the "Property"):

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 20 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN; THENCE SOUTH TO THE SOUTH LINE OF MILTON AVENUE TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 228.58 FEET; THENCE EAST 112 FEET; THENCE NORTH TO THE SOUTH LINE OF MILTON AVENUE; THENCE WEST 112 FEET TO THE TRUE POINT OF BEGINNING, IN PIERCE COUNTY, WASHINGTON.

2.2 It is necessary for the City to acquire the Property for the future extension of 66th Avenue East.

2.3 Franich agrees to sell and convey and the City agrees to purchase and accept conveyance of the Property on the terms and conditions set forth in this Agreement.

3. **Purchase Price.** The total purchase price for the Property is \$410,000 cash, payable at Closing. ("Closing" shall mean the closing of the transaction contemplated by this Agreement as provided in Paragraph 12). In addition, the City shall pay at Closing an additional amount not to exceed \$750.00 pursuant to RCW 8.25.020 for various expenditures actually and reasonably incurred by Franich in the process of evaluating the City's offer. Franich acknowledges that it is receiving just compensation for the Property.

4. **Earnest Money.** Within three business days after ratification of this Agreement by the City Council as provided in Paragraph 9, the City shall deposit with the Closing Agent the sum of \$20,000 as earnest money for purchase of the Property. If title is insurable and all other contingencies have been met or waived and the City fails or refuses, without legal excuse, to complete the purchase, the earnest money shall be forfeited as liquidated damages, as the sole and exclusive remedy available to Franich for such failure. Otherwise, the earnest money shall be refunded to the City in the event this transaction does not close.


FRANICH


THE CITY



5. **Legal Description.** Upon consent of the parties, Closing Agent may insert, attach, or correct the legal description of the Property as required to consummate the conveyance thereof in accordance with the intent of the Agreement.

6. **Title.** Franich shall convey title to the Property by bargain and sale deed. Subject to Paragraph 7 below, title to the Property shall be free of all liens, encumbrances or defects, except as expressly approved by the City in writing. Encumbrances to be discharged by Franich may be paid out of the Purchase Price at date of Closing.

7. **Title Insurance.** Fees for standard coverage owner's title insurance policies shall be paid by The City. The title policies to be issued shall contain no exceptions other than the usual general exceptions provided for in the specified title policy form, plus encumbrances or defects approved by the City in Paragraph 6 above. If title cannot be made so insurable by the date of Closing, The City may elect to terminate this Agreement, or may waive any such defects and elect to purchase as described herein.

8. **Included Items/Personal Property.** This transaction includes all landscaping, improvements and appurtenances on or in the Property, and all personal property located on the Property at Closing. Any personal property on the Property that Franich or any of the Franich beneficiaries want to keep shall be removed from the Property by Franich prior to Closing. In addition, Franich shall, prior to Closing, remove from the Property any fuel containers, items with fuel tanks, and any potentially hazardous personal property, such as fertilizer, vehicle batteries, pesticides and paint. Within ten days of court approval of this Agreement, a City representative shall meet with the Franich Trustee at the Property and identify the items of personal property that the City requires to be removed under this paragraph. If all such items have not been removed at the time of Closing, then at Closing, \$2000 of the proceeds of the sale shall remain in escrow and shall be disbursed in the following order of priority: (1) To the City for costs and expenses incurred by the City to remove from the Property any fuel containers, items with fuel tanks, and any potentially hazardous personal property, such as fertilizer, vehicle batteries, pesticides and paint that remained on the Property at Closing, upon submission of a written invoice itemizing the costs and expenses incurred; (2) the remainder to Franich. The City shall have 60 days from Closing to submit its invoice to the Closing Agent. If the Closing Agent does not receive the City's invoice within 60 days after Closing, the Closing Agent shall promptly disburse the remaining proceeds to Franich.

9. **City Council Approval.** This Agreement is subject to ratification by the Fife City Council. This matter shall be submitted to the City Council for ratification at the June 26, 2012 City Council meeting. If the City Council does not ratify the Agreement by June 27, 2012, this Agreement shall terminate.


FRANICH


THE CITY