

RESOLUTION NO. 1598

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON RATIFYING A PURCHASE AND SALE AGREEMENT WITH BENAROYA CAPITAL COMPANY FOR THE SALE OF TAX PARCEL NO. 0420084065

WHEREAS, the City of Fife owns a 45,302 square foot (1.04 acre) parcel of land at 3102 Freeman Road East, Pierce County Assessor's Tax Parcel No. 0420084065 (the "Property"), which it acquired on August 11, 2010 from Kelley Family Enterprises for \$365,000; and

WHEREAS, the acquisition was for the purpose of constructing storm drainage improvements for Freeman Road East; and

WHEREAS, Benaroya Capital Company and SunCap Property Group, the owner and developer of the surrounding property, expressed an interest in acquiring the Property for construction of a major distribution center; and

WHEREAS, alternate sites and designs are available such that the Property is not necessary for constructing storm drainage improvements for Freeman Road; and

WHEREAS, on January 21, 2014, the City County adopted Resolution No. 1584 declaring the Property surplus, and authorizing the City Manager to negotiate with Benaroya Capital Company and SunCap for the purchase and sale of the Property, provided that any resulting purchase and sale agreement shall be subject to the City Council's approval; and

WHEREAS, the City Manager has negotiated a purchase and sale agreement with Benaroya for the purchase and sale of the Property as set forth in Exhibit A attached hereto; and

WHEREAS, the City Council has determined that it is in the best interests of the City and its citizens to ratify the purchase and sale agreement attached as Exhibit A; now, therefore,

BE IT RESOLVED that the City Council hereby ratifies and approves the Purchase and Sale Agreement with Benaroya Capital Company attached hereto as Exhibit A and authorizes the City Manager to perform the actions necessary to sell the property in accordance with the Agreement.

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ADOPTED by the City Council at an open public meeting held on the 13th day of May
2014.


Tim Curtis, Mayor

Attest:


for Michelle Meador
Carol Etgen, City Clerk

EXHIBIT " A "

PURCHASE AND SALE AGREEMENT

1. **Date and Parties.** THIS PURCHASE AND SALE AGREEMENT ("AGREEMENT"), is dated, for reference purposes only, the 23rd day of April, 2014, and is made and entered into by and between City of Fife, a Washington municipal corporation ("City"), and Benaroya Capital Company, L.L.C., a Washington limited liability company ("Buyer").

2. **Property to be Conveyed.**

2.1 The City is the owner of the real property identified as Pierce County Tax Parcel No. 0420084065 and legally described as follows (the "Property"):

The North 130 feet of the following described property: The West 400 feet of that portion of the Southeast quarter of the Southwest quarter of the Southeast quarter of Section 8, Township 20 North, Range 4 East of the Willamette Meridian, lying south and west of Freeman Extension County Road, in Pierce County, Washington.

2.2 The Buyer is interested in acquiring the Property for commercial development.

2.3 On January 21, 2014, the City adopted Resolution No. 1584, declaring the Property surplus, and authorizing the City Manager to negotiate a purchase and sale agreement for the sale of the Property, subject to City Council approval; and

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

3. **Purchase Price.** The City, as a government entity, must receive compensation for the Property commensurate with the Property's fair market value. The parties agree that the fair market value of the Property is \$365,000, which shall be the "Purchase Price." In lieu of cash, the Buyer offers to construct, at Buyer's expense but not to exceed the sum of \$365,000.00, the public improvements set forth in Exhibits A-1 and A-2 attached hereto together with undergrounding of existing above-ground utilities ("Frontage Improvements"), along the full Freeman Road frontage of Pierce County Tax Parcel No. 0420171064 located at 3820 Freeman Road East (the "Holt Parcel"), which Frontage Improvements along the Holt Parcel are above and beyond those that are required as a condition of development or to mitigate impacts of the development of the Property, as currently proposed. The City shall notify Buyers in writing within 60 days from the Effective Date of this Agreement, of its election to accept cash payment or the Frontage Improvements along the Holt Parcel. If the City elects to have the Buyer construct the Frontage Improvements along the Holt Parcel, Buyer shall at Closing submit to the City a performance and payment bond in the amount of 150% of the Purchase Price to secure performance of the Frontage Improvement obligation along the Holt Parcel on the City standard construction bond form. Construction of the


The City


Buyer

Frontage Improvements along the Holt Parcel shall be completed and accepted by the City by December 31, 2015. Buyer agrees that if the City elects the Frontage Improvements along the Holt Parcel in lieu of monetary compensation, the cost of the Frontage Improvements along the Holt Parcel shall not be included in LID 08-3 or any other local improvement district for Freeman Road street improvements, and that, at Closing, Buyer shall execute and record an agreement on behalf of itself as owners of property within LID 08-3 and its successors and assigns, on a form approved by the City, not to protest or object to the removal of Pierce County Tax Parcel No. 0420171064 from LID 08-3. If the City elects the Frontage Improvements along the Holt Parcel option, it shall still have the right to require cash payment of the Purchase Price in lieu of the Frontage Improvements along the Holt Parcel after Closing, if the City has not obtained fee title to Pierce County Tax Parcel No. 0420171064 and sends written notice to Buyer by November 1, 2014. In such event, within 30 days of the written notice, Buyer shall pay the City the Purchase Price in cash, and the City shall release the performance and payment bond. In addition, (a) should the City elect to have Purchaser construct the Frontage Improvements along the Holt Parcel, and if the cost of such construction is less than \$365,000.00, then in such event the Purchaser shall pay to the City the difference between the actual cost of construction of the Frontage Improvements along the Holt Parcel and the \$365,000.00, and (b) if the cost of such construction is more than \$365,000.00, the City shall be responsible for reimbursing Buyer for the overage. Cost of construction shall include direct costs paid to contractors and engineers for construction and design of the Frontage Improvements on the Holt Property, but shall exclude attorney's fees and indirect costs. Buyer estimates that the cost of construction of the Frontage Improvements on the Holt Property will be less than \$365,000. Buyer will exercise the same effort at cost efficiency in constructing the Frontage Improvements on the Holt Property as it would if its monetary obligation for such improvements was not limited to \$365,000.

This Agreement does not address what Frontage Improvements or other improvements are or may be required as a condition of development of the Property or any other property owned by Buyer. Improvements required as a condition of development are outside the scope of this Agreement. The Frontage Improvements to the Holt Property made by Buyer under this Agreement shall not be considered as mitigation for any impacts of development of the Property or any other property owned by Buyer, and Buyer shall not be entitled to any impact fee credit for construction of the Frontage Improvements on the Holt Property under this Agreement.

4. **Earnest Money.** Within two (2) business days of the Effective Date (as defined below), Buyer shall provide an Earnest Money Promissory Note in the amount of \$10.00 to Escrow (as defined below). In addition thereto and as additional consideration, if the transaction contemplated by this Agreement does not occur, Buyer shall provide the City with a copy of all non-proprietary engineering, geotechnical, environmental or other studies, tests or reports, it prepares or has prepared regarding the Property, provided that any such reports are provided without any representations or warranties with respect thereto. The cost or value of any such reports shall not be a credit toward the Purchase Price.



The City



Buyer

5. **Right of Entry.** The City shall permit the Buyer and its agents to enter the Property at reasonable times, to conduct inspections concerning soil conditions, sensitive areas, and other matters affecting the feasibility of the Property for the Buyer's intended use. Buyer shall defend, indemnify and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of the use of the Property under this Right of Entry or from any activity, work or thing done, permitted, or suffered by Grantee in or about the Property, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

6. **Legal Description.** The parties hereby authorize the Closing Agent to insert, attach, or correct the legal description of the Property as required to consummate the conveyance thereof. The legal description is as set forth in Section 1 above. The City further acknowledges that Buyer intends to buy this Property as a part of a larger land aggregation in order to accomplish future development, and that property aggregation will involve lot boundary adjustments, incorporating the Property with other properties owned by Buyer and being acquired by Buyer from a third parties. The City agrees to cooperate in a timely manner to allow this lot boundary adjustment to proceed in its normal course, provided all applicable City ordinances and regulations are complied with.

7. **Title.** The City shall convey title to the Property by statutory warranty deed. Title to the Property shall be free of all liens, encumbrances or defects, except as expressly approved by the Buyer in writing. Rights reserved in federal patents or state deeds, building or use restrictions general to the district, easements and encroachments not materially affecting the Buyer's intended use of the Property shall not be deemed encumbrances or defects.

8. **Title Insurance.** Fees for a standard coverage owner's title insurance policy shall be paid by the City. The City authorizes the Closing Agent, at any time after the City Council ratifies this Agreement, to apply for and deliver to the Buyer a preliminary commitment for such policy. The Buyer may, at its option, request an ALTA extended coverage title insurance policy, and the Buyer shall be responsible for the increase in title insurance costs associated with extended coverage. 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 Buyer in Paragraph 7 above. If title cannot be made so insurable by the date of Closing, the Buyer may elect to terminate this Agreement, or may waive any such defects and elect to purchase as described herein.

9. **Included Items.** This transaction includes any landscaping, improvements and appurtenances, if any, on the Property.



The City



Buyer

10. **City Council Approval.** This Agreement is subject to ratification by the Fife City Council. This Agreement shall be submitted to the City Council for ratification within thirty (30) days after the Effective Date. If the City Council does not ratify the Agreement within the 30 day period, this Agreement shall terminate.

11. **Closing.** Closing shall occur within 45 days after ratification by the City Council, or 70 days after the Effective Date, whichever is greater, in the office of Fidelity Title Insurance Company, University Place, Washington, ("Escrow Agent"), or such other place or location as the parties may mutually agree. The City and Buyer will, on demand, deposit in escrow all instructions and moneys necessary to complete the purchase in accordance with this Agreement. Closing shall be deemed to have occurred when all documents are recorded and the sale proceeds are available to the City.

12. **Closing Costs & Pro-Rated Items.** The City shall be responsible for payment of title insurance premiums (except the Buyer shall be responsible for any increased premium as a result of an ALTA extended coverage), excise tax and one-half of the Closing Agent's fee and escrow fees. The Buyer shall be responsible for the recording fees, and one-half of the Closing Agent's fee and escrow fees. Property taxes for the current year and water and other utilities constituting liens, if any, shall be prorated as of the date of Closing.

13. **Possession.** The Buyer shall be entitled to possession and use of the Property at Closing.

14. **Environmental Representations and Warranties.** The City warrants that it has not caused or permitted the Property to be used as a site for generation, manufacture, refining, transportation, transfer, treatment, storage, handling, disposing or processing of hazardous substances, or other dangerous or toxic materials or solid waste except in compliance with applicable federal, state and local laws or regulations. The City has not caused or permitted and has no knowledge of the release of any hazardous substance on any of the Property at any time.

15. **Obligations to Survive Closing.** It is mutually agreed by the parties that any provision contained in this Agreement which shall by its nature or terms impose any obligation or duty upon any party hereto, or give any right or benefit to any party hereto, continuing beyond the date of conveyance of the Property, will not be cancelled, but will instead survive such conveyance and will continue in full force and effect until all such obligations and duties are fully performed and all such rights and benefits are fully realized.

16. **Attorneys' Fees and Expenses.** In the event any party brings a lawsuit to enforce or defend any rights herein, the prevailing party shall be awarded all costs and expenses and reasonable attorney fees.



The City



Buyer

17. **Notice.** All notices required by this Agreement shall be deemed delivered to the respective party on the date that it is personally delivered to the address set forth below, or two days after the document is mailed, by both first class and certified mail, return receipt requested by U.S. Mail to the addresses set forth below:

City: 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 98401-1317

Buyer: Benaroya Capital Company, L.L.C.
3600 – 136th Place S.E., Suite 250
Attn: Larry Benaroya
larryb@benaroya.com
Attn: Joe Alhadeff
joea@benaroya.com

With a copy to: Anne DeVoe Lawler
Jameson Babbitt Stiles & Lombard, PLLC
801 Second Avenue, Suite 1000
Seattle, WA 98104
alawler@jbsl.com

18. **Successors and Assigns.** This Agreement and all of the terms and provisions set forth herein shall inure to the benefit of and be binding upon the parties, their heirs, successors, legal representatives and assigns.

19. **Further Acts.** In addition to the acts specifically required in this Agreement, the Parties agree to perform or cause to be performed at and after Closing any and all further acts as may be reasonably necessary to consummate the transaction described herein.

20. **Remedies.** Both parties acknowledge that specific performance of this Agreement is an appropriate remedy should either party fail to perform under the terms of the Agreement.



The City



Buyer

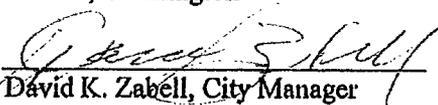
21. **Complete Agreement.** The Agreement and any addenda and exhibits to it state the entire understanding of Seller and the City regarding this transaction. There are no verbal or written agreements which modify or affect the Agreement.

22. **Facsimile Transmission.** Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the escrow agent, the parties will confirm facsimile transmitted signatures by signing an original document.

23. **Effective Date.** The effective date of this Agreement shall be the date the Agreement is fully executed by both parties.

THE CITY:

City of Fife, Washington

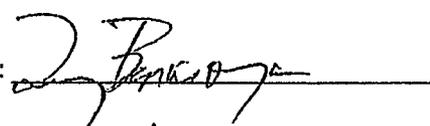
By: 

David K. Zabell, City Manager

Date: 4/23/2014

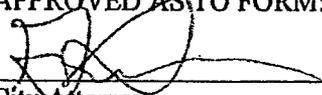
BUYER:

Benaroya Capital Company, LLC

By: 

Date: 4/23/14

APPROVED AS TO FORM:

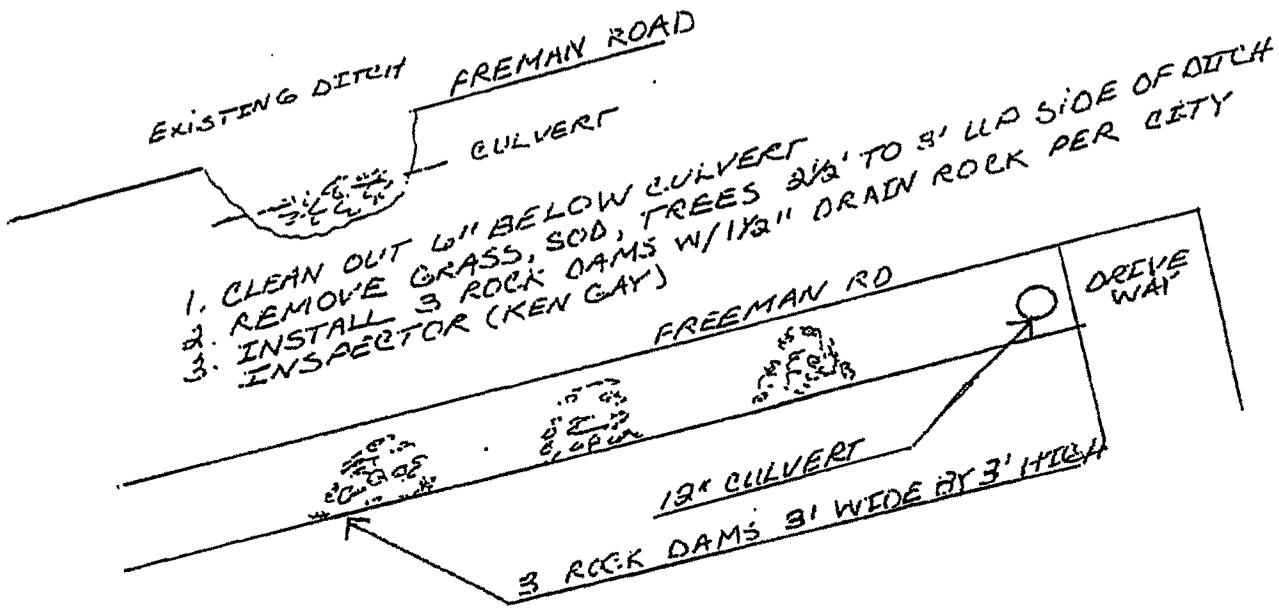

City Attorney

assisted city atty


The City


Buyer

EXHIBIT A-1



DEFERRED IMPROVEMENT DETAIL
FREEMAN RD STREET
NOT TO SCALE

200503290413.005

Exhibit A-2

