

RESOLUTION R-5544

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE A REAL PROPERTY PURCHASE AND SALE AGREEMENT FOR ACQUISITION OF PROPERTY TO EXPAND JUANITA HEIGHTS PARK.

1 WHEREAS, property owned by Dunvegan Trust
2 ("Property") is a central parcel within Juanita Heights Park and is
3 desired for public park purposes, to expand public use and
4 enjoyment, protect natural resources, and enhance neighborhood
5 connectivity; and
6

7 WHEREAS, expansion of Juanita Heights Park to preserve
8 the existing forest is identified in the City of Kirkland 2015 Parks,
9 Recreation, and Open Space (PROS) Plan and further identified in
10 the adopted Finn Hill Neighborhood Plan; and
11

12 WHEREAS, the open space preservation and trail
13 connections are supported through the Finn Hill Neighborhood
14 Plan; and
15

16 WHEREAS, the City of Kirkland has obtained a grant from
17 the King County Conservation Futures Tax Grant Program to
18 reimburse the City for an additional one-half of the Property's
19 purchase price; and
20

21 WHEREAS, staff has negotiated a proposed Purchase and
22 Sale Agreement ("Agreement") for acquisition of the Property for
23 the total amount of \$169,000 as provided in the attached Exhibit
24 A.
25

26 NOW, THEREFORE, be it resolved by the City Council of the
27 City of Kirkland as follows:
28

29 Section 1. The City Manager is hereby authorized and
30 directed to execute on behalf of the City of Kirkland a Real
31 Property Purchase and Sale Agreement for the Property
32 substantially similar to that attached to this Resolution as Exhibit
33 A.

34 Passed by majority vote of the Kirkland City Council in open
35 meeting on the 21 day of June, 2022.

36
37 Signed in authentication thereof this 21 day of June,
38 2022.



Penny Sweet, Mayor

Attest:



Kathi Anderson, City Clerk

VACANT LAND REAL PROPERTY PURCHASE AND SALE AGREEMENT

This Agreement by and between the City of Kirkland, a municipal corporation of the State of Washington, ("Buyer" or "the City") and Jennifer McLeod Metz and Lisa McLeod Nunes as Co-Trustees for the Dunvegan Trust Agreement "Washington QTIP Trust" u/t/d 11-25-08, an undivided 35% AND Jennifer McLeod Metz and Lisa McLeod Nunes as Co-Trustees for the Dunvegan Trust Agreement "Credit Trust" u/t/d 11-25-08, an undivided 65% ("Seller"). It is agreed that this Purchase and Sale Agreement is contingent upon the twenty (20) day notice requirement to the beneficiaries of the Seller's Trust and the beneficiaries' acceptance of the said sale as required by RCW 11.100.140.

For and in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

1. Purchase of Real Property. Seller and Buyer hereby agree to the purchase and sale of the unimproved vacant real property in the City of Kirkland, King County tax parcel number 919410-0310-00, and legally described as:

LOTS 7 TO 12, INCLUSIVE, IN BLOCK 8 OF WATER FRONT ADDITION TO KIRKLAND, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 6 OF PLATS, PAGES 92, 93 AND 94, RECORDS OF KING COUNTY, WASHINGTON

("Property"), together with all of Seller's right, title and interest in any improvements situated on the land.

2. Purchase Price and Covenant; Payment. The Purchase Price for the Property shall be One hundred sixty-nine thousand and 00/100 Dollars (\$169,000). Buyer shall deposit the Purchase Price with the Escrow Holder at or before Closing, as described below.
3. Escrow Holder. Promptly following the execution of this Agreement, Buyer shall open an escrow with Chicago Title Insurance Company (the "Escrow Holder"). A copy of this Agreement shall be provided to the Escrow Holder to advise the Escrow Holder of the terms and conditions hereof. Escrow Holder shall conduct the Closing pursuant to escrow instructions of the Parties, which shall be consistent herewith.
4. Feasibility Contingency and Access. Buyer's obligations under this Agreement are conditioned upon Buyer's satisfaction in Buyer's sole discretion, concerning all aspects of the Property, including its physical condition; the presence of or absence of any hazardous substances; the potential financial performance of the Property; the availability of government permits and approvals; and the feasibility of the Property for Buyer's intended purpose. This Agreement shall terminate unless Buyer gives written notice to Seller within 20 business days of the Effective Date stating that this condition is satisfied. If such notice is timely given, the feasibility contingency stated in this Section shall be deemed to be satisfied. As used in this Agreement, the term "Feasibility Period" shall mean the period

beginning upon the Effective Date and ending upon the satisfaction or waiver of the feasibility contingency.

Seller shall permit Buyer and its agents, at Buyer's sole expense and risk to enter the Property at reasonable times subject to the rights of and after legal notice to tenants, to conduct inspections concerning the Property and improvements, including without limitation, the structural condition of improvements, hazardous materials, pest infestation, soil conditions, sensitive areas, wetlands or other matters affecting the feasibility of the Property for Buyer's intended use. Buyer shall schedule any entry onto the Property with Seller in advance and shall comply with Seller's reasonable requirements including those relating to security and confidentiality. Buyer shall not perform any invasive testing, including environmental inspections beyond a Phase I assessment, without obtaining Seller's prior written consent, which shall not be unreasonably withheld. Buyer shall be solely responsible for all costs of its inspections and feasibility analysis and has no authority to bind the Property for the purposes of statutory liens. Buyer agrees to indemnify and defend Seller from all liens, costs, claims and expenses, including attorneys' and experts' fees, arising from or relating to entry onto or inspection of the Property by Buyer and its agents. This Agreement to indemnify and defend Seller shall survive closing.

5. Title Policy and Condition of Title. Seller authorizes Buyer, its Lender, and Closing Agent, at Seller's expense, to apply for and deliver to Buyer an extended coverage owner's policy of title insurance. The title report shall be issued by Chicago Title Insurance Company. Buyer shall notify Seller of any objectionable matters in the title report or any supplemental report within the earlier of 20 days after mutual acceptance of this Agreement or the expiration of the Feasibility Period. This Agreement shall terminate unless within 10 days of Buyer's notice of such objections: (1) Seller agrees to remove all objectionable provisions; or (2) Buyer notifies Seller that Buyer waives any objections which Seller does not agree to remove. If any new title matters are disclosed in a supplemental title report, then the preceding termination, objection and waiver provisions shall apply to the new title matters except that Buyer's notice of objections must be delivered within 5 days of delivery of the supplemental report and Seller's response or Buyer's waiver must be delivered within 2 days of Buyer's notice of objections. The closing date shall be extended to the extent necessary to permit time for these notices. Buyer shall not be required to object to any mortgage or deed of trust liens, or the statutory lien for real property taxes, and the same shall not be deemed to be Permitted Exceptions; provided that the lien securing any financing which Buyer has agreed to assume shall be a permitted exception. Except for the foregoing, those provisions not objected to or for which Buyer waived its objections shall be referred to collectively as the "Permitted Exceptions." Seller shall cooperate with Buyer and the title company to clear objectionable title matters but shall not be required to incur any out-of-pocket expenses or liability other than payment of monetary encumbrances not assumed by Buyer and proration of any real property taxes, and Seller shall provide an owner's affidavit containing the information and reasonable covenants requested by the title company. The title policy shall contain no exceptions other than the General Exclusions and Exceptions common to such policies, the Covenant and the Permitted Exceptions. If the title to the Property is uninsurable, then the Buyer's sole recourse shall be to terminate this Agreement.

6. Closing. This sale shall be closed on or before July 21, 2022, ("Closing") by Chicago Title Insurance Company, Attn: Paula Adams, 11900 NE 1st St, Building G, Suite 110, Bellevue, Washington 98005 ("Closing Agent"). Buyer and Seller shall deposit with Closing Agent by noon on the scheduled closing date all instruments and monies required to complete the purchase in accordance with this Agreement. Closing shall be deemed to have occurred when the Bargain and Sale deed is recorded, and the sale proceeds are available to Seller. Time is of the essence in the performance of this Agreement. This Agreement is intended to constitute escrow instructions to Closing Agent. Buyer and Seller will provide any supplemental instructions requested by Closing Agent provided that the same are consistent with this Agreement. Buyer is entitled to possession on closing.

The Seller requests attorney review of the Closing document by contacting John McMasters of Mullavey Prout Grenley & Foe, LLP at jmcmasters@ballardlawyers.com or alternatively by calling 206-789-2511, at least five days prior to closing.

7. Closing Costs. Seller shall deliver any information reasonably requested by Closing Agent to allow Closing Agent to prepare a settlement statement for closing. Seller shall pay the premium for the owner's standard coverage title policy. Buyer shall pay the excess premium attributable endorsements requested by Buyer and the cost of any survey required in connection with the same. Seller and Buyer shall each pay one-half of the escrow fees. Real estate excise taxes, if any, shall be paid by Seller. Real and personal property taxes and assessments payable in the year of closing; collected rents on any existing tenancies; interest; utilities; and other operating expenses shall be pro-rated as of closing. Seller assures Buyer the Property is vacant real property for which there are no utilities or personal property. Seller is represented by Compass Real Estate and will pay a four (4%) percent commission.
8. Post-Closing Adjustments, Collections and Payments. After closing, Buyer and Seller shall reconcile the actual amount of revenues or liabilities upon receipt or payment thereof to the extent those items were prorated or credited at closing based on estimates. Any bills or invoices received by Buyer after closing shall be paid by Seller upon presentation of such bill or invoice.
9. Assurance. Seller shall not enter into any lease, trust deed, mortgage, restriction, encumbrance, lien, license, or other instrument or agreement affecting the Property without the prior written consent of Buyer from and after the date of this Agreement. Seller warrants as follows:

that Seller is the sole legal owner of the fee simple interest in the Property and is not holding title as a nominee for any other person or entity; that no person or entity has a first right of refusal or option to purchase or other similar right to or interest in the property; that no labor, materials or services have been furnished in, on or about the property or any part thereof as a result of which any mechanics', laborers' or materialpersons' liens or claims might arise.

10. Seller's Representations. Except as disclosed to or known by Buyer prior to the satisfaction or waiver of the feasibility contingency stated above, or in the title report or any

supplemental report or documents referenced therein, Seller represents to Buyer that, to the best of Seller's actual knowledge, each of the following is true as of the date hereof:

- (a) Seller is authorized to enter into the Agreement, to sell the Property and to perform its obligations under this Agreement;
- (b) The Property is vacant unimproved real property and there are no leases or contracts pertaining to the Property.
- (c) Seller has not received any written notices that the Property violate any applicable laws, regulations, codes or ordinances;
- (d) There is no pending or threatened litigation which would adversely affect the Property or Buyer's ownership thereof after closing;
- (e) There is no pending or threatened condemnation or similar proceedings affecting the Property, and the Property is not within the boundaries of any planned or authorized local improvement district;
- (f) Seller has paid (except to the extent prorated at closing) all local state and federal taxes, if any, (other than real and personal property taxes and assessments described above), if any, attributable to the period prior to closing which, if not paid, could constitute a lien on the Property (including any personal property), or for which Buyer may be held liable after closing;
- (g) Seller is not aware of any concealed material defects in the Property except as disclosed to Buyer in writing during the Feasibility Period;
- (h) To the best of Seller's knowledge, there are no Hazardous Substances (as defined below) currently located in, on, or under the Property in a manner or quantity that presently violates any Environmental Law (as defined below); there are no underground storage tanks located on the Property; and there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of Hazardous Substances or the violation of Environmental Law at the Property. As used in this Agreement, the term "Hazardous Substances" shall mean any substance or material now or hereafter defined or regulated as a hazardous substance, hazardous waste, toxic substance, pollutant, or contaminant under any federal, state, or local law, regulation or ordinance governing any substance that could cause actual or suspected harm to human health or the environment ("Environmental Law"). The term "Hazardous Substances" specifically includes, but is not limited to, petroleum, petroleum by-products and asbestos.

All representations and warranties survive closing by one (1) year, with the exception of Section 10(h), which shall survive closing without limitation.

11. Condition of Property As-Is. Except for those representations and warranties specifically included in this Agreement; (a) Seller makes no representations or warranties regarding the Property; (b) Seller hereby disclaims, and Buyer hereby waives, any and all representations or warranties of any kind, express or implied, concerning the Property or any portion thereof and the improvements, as to its condition, value, compliance with laws, status of permits or approvals, existence or absence of hazardous material on site, occupancy rate or any other matter of similar or dissimilar nature relating in any way to

the Property, including the warranties of fitness of a particular purpose, tenantability, habitability and use; (c) Buyer otherwise takes the Property "As Is;" and (d) Buyer represents and warrants to Seller that Buyer has sufficient experience and expertise such that it is reasonable for Buyer to rely on its own pre-closing inspections and investigations.

As the property was inherited and the Buyer intends to use the Property for open space purposes, the Buyer waives the right to receive the disclosure statement required by RCW 64.06.015(Vacant Land Form 17).

The Buyer agrees to not sue and releases (but does not indemnify) the Seller from any and all claims, demands and/or damages brought by the Buyer based upon any federal, state or local statute, regulation, ordinance, order or common law, and any diminution in the fair market value of the subject Property or other Property, arising directly or indirectly from, or in any way connected with, the presence or release of any Hazardous Substances (as defined above in Section 10(h)) on the subject Property, except this release and agreement not to sue does not apply to claims alleging misrepresentation or fraud in Seller's assurances made in Section 10(h) of this Agreement and further would be inapplicable in its entirety to any claims, demands, or damages if any such misrepresentation or fraud is found to have occurred. This Section shall survive closing.

12. FIRPTA-Tax Withholding at Closing. Closing Agent is instructed to prepare a certification that Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act. Seller agrees to sign this certification.
13. Conveyance. The Seller has not had the property surveyed and Title shall be conveyed by a Bargain and Sale Deed (LPO form) subject only to the Permitted Exceptions and the Covenant.
14. Agency Disclosure. Seller is represented by Compass Real Estate and will pay a four (4%) percent commission. Buyer is not represented by a real estate agent and no Buyer agent commission is due.
15. Assignment. Buyer may not assign this Agreement to any other party.
16. Remedies. In the event Buyer fails, without legal excuse, to complete the purchase of the Property, then Seller may terminate this Agreement and shall not be entitled to remedies. In the event Seller fails, without legal excuse, to complete the sale of the Property, then, as Buyer's sole remedy, Buyer may either (a) terminate this Agreement; or (b) bring suit to specifically enforce this Agreement and recover incidental damages provided Buyer must file suit within 60 days of the scheduled date of closing or any earlier date Seller has informed Buyer in writing that Seller will not proceed with Closing.
17. Disputes - In the event that either party hereto brings an action or proceeding for a declaration of the rights of the parties under this Agreement, for injunctive relief, or for an alleged breach or default of this Agreement, or any other action between the parties arising out of this Agreement or the transactions contemplated hereby, venue for such a dispute

shall be in the King County Superior Court and the prevailing party in any such action shall be entitled to an award of reasonable attorneys fees and court costs incurred in such action or proceeding, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.

18. Information Transfer. In the event this Agreement is terminated, Buyer agrees to deliver to Seller within 10 days of Seller's written request, copies of all materials received from Seller and any non-privileged plans, studies, reports inspections, appraisals, surveys, drawings, permits application or other development work product relating to the Property in Buyer's possession or control as of the date this Agreement is terminated.

19. Binding. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto and shall inure to the benefit of them. This Agreement and any addenda and exhibits to it state the entire understanding of the Buyer and Seller regarding the sale of the Property. There are no verbal or other written agreements which modify or affect this Agreement.

20. Counterparts. The parties may execute this Agreement in one or more identical counterparts, all of which when taken together will constitute one and the same instrument. A facsimile or electronic mail transmission shall be binding on the party or parties whose signatures appear thereon. If so executed, each counterpart is to be deemed an original for all purposes, and all counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart. Electronic delivery of documents (such as fax or email) shall be legally sufficient to bind the party the same as delivery of an original.

21. Effective Date. This Agreement shall be deemed effective on the last date signed below.

EXECUTED to be effective as of the date listed above.

City of Kirkland (BUYER)

By: _____

Print Name: _____

Its: _____

Approved as to Form:

Assistant City Attorney

Jennifer McLeod Metz and Lisa McLeod Nunes as Co-Trustees for the Dunvegan Trust Agreement "Washington QTIP Trust" u/t/d 11-25-08, holding an undivided 35% interest, AND Jennifer McLeod Metz and Lisa McLeod Nunes as Co-Trustees for the Dunvegan Trust Agreement "Credit Trust" u/t/d 11-25-08, holding an undivided 65% interest (SELLER)

Dunvegan Trust Agreement "Washington QTIP Trust" **(SELLER)**

By: _____

Print Name: _____

Its: _____

By: _____

Print Name: _____

Its: _____

Dunvegan Trust Agreement "Credit Trust" **(SELLER)**

By: _____

Print Name: _____

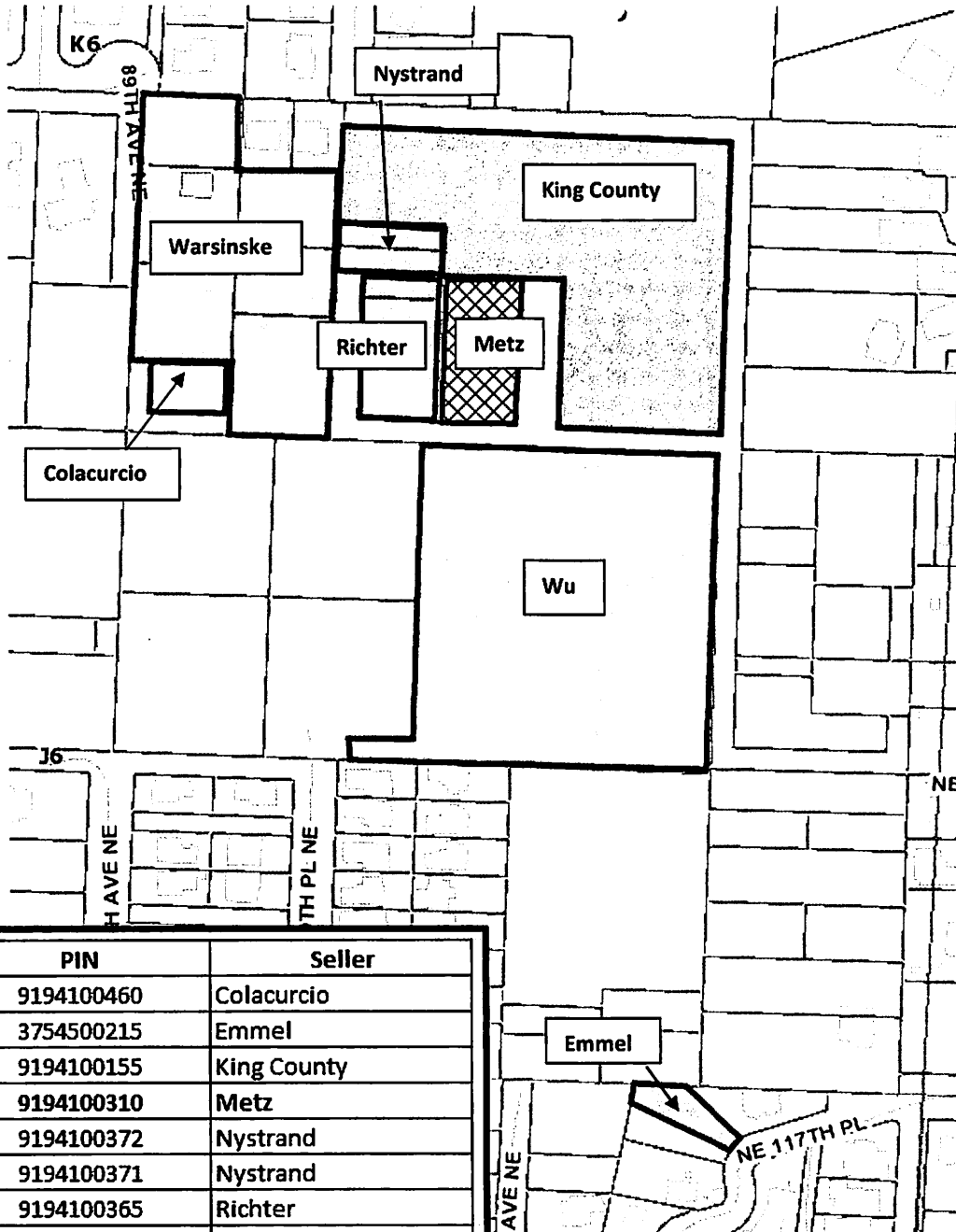
Its: _____

By: _____

Print Name: _____

Its: _____

Appendix D – Juanita Heights Park Acquisition Map



PIN	Seller
9194100460	Colacurcio
3754500215	Emmel
9194100155	King County
9194100310	Metz
9194100372	Nystrand
9194100371	Nystrand
9194100365	Richter
9194100340	Richter
9194100505	Warsinke
9194100508	Warsinke
9194100500	Warsinke
9194100410	Warsinke
9194100445	Warsinske
9194100485	Warsinske
9194100940	Wu