

RESOLUTION R -3505

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING AND DIRECTING THE CITY MANAGER TO SIGN ON BEHALF OF THE CITY OF KIRKLAND AN OPTION AGREEMENT FOR PURCHASE OF CERTAIN REAL PROPERTY WITHIN THE JUANITA AREA OF THE CITY OF KIRKLAND FOR PARK RECREATION AND OTHER MUNICIPAL USES, WHICH SAID OPTION SHALL EXPIRE MARCH 15, 1990.

Whereas, the City Council for the City of Kirkland recognizes the need for a neighborhood park to include recreational and other municipal uses within the Juanita area of the City of Kirkland, and

Whereas, the International Church of the Foursquare Gospel, as owner of real property within the Juanita area, has agreed to grant to the City of Kirkland an option to purchase said real property upon the terms and conditions set forth in that certain Option Agreement and Agreement of Purchase and Sale, attached to the original of this Resolution and by this reference incorporated herein, and

Whereas, the Kirkland City Council considers said real property to be an appropriate location for a neighborhood park, including recreational and other municipal uses within the Juanita area of the City of Kirkland, now, therefore

Be it resolved by the City Council of the City of Kirkland as follows:

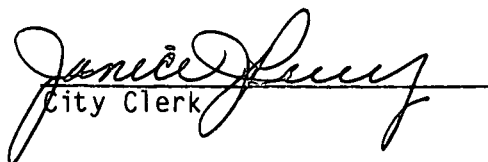
Section 1. The City Manager for the City of Kirkland is hereby authorized and directed to sign on behalf of the City of Kirkland that certain Option Agreement and Agreement of Purchase and Sale of real property between the City of Kirkland as optionee and the International Church of the Foursquare Gospel, a nonprofit corporation as optionor, copy of which is attached to the original of this Resolution and by this reference incorporated herein.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 17th day of January, 1989.

Signed in authentication thereof this 17th day of January, 1989.

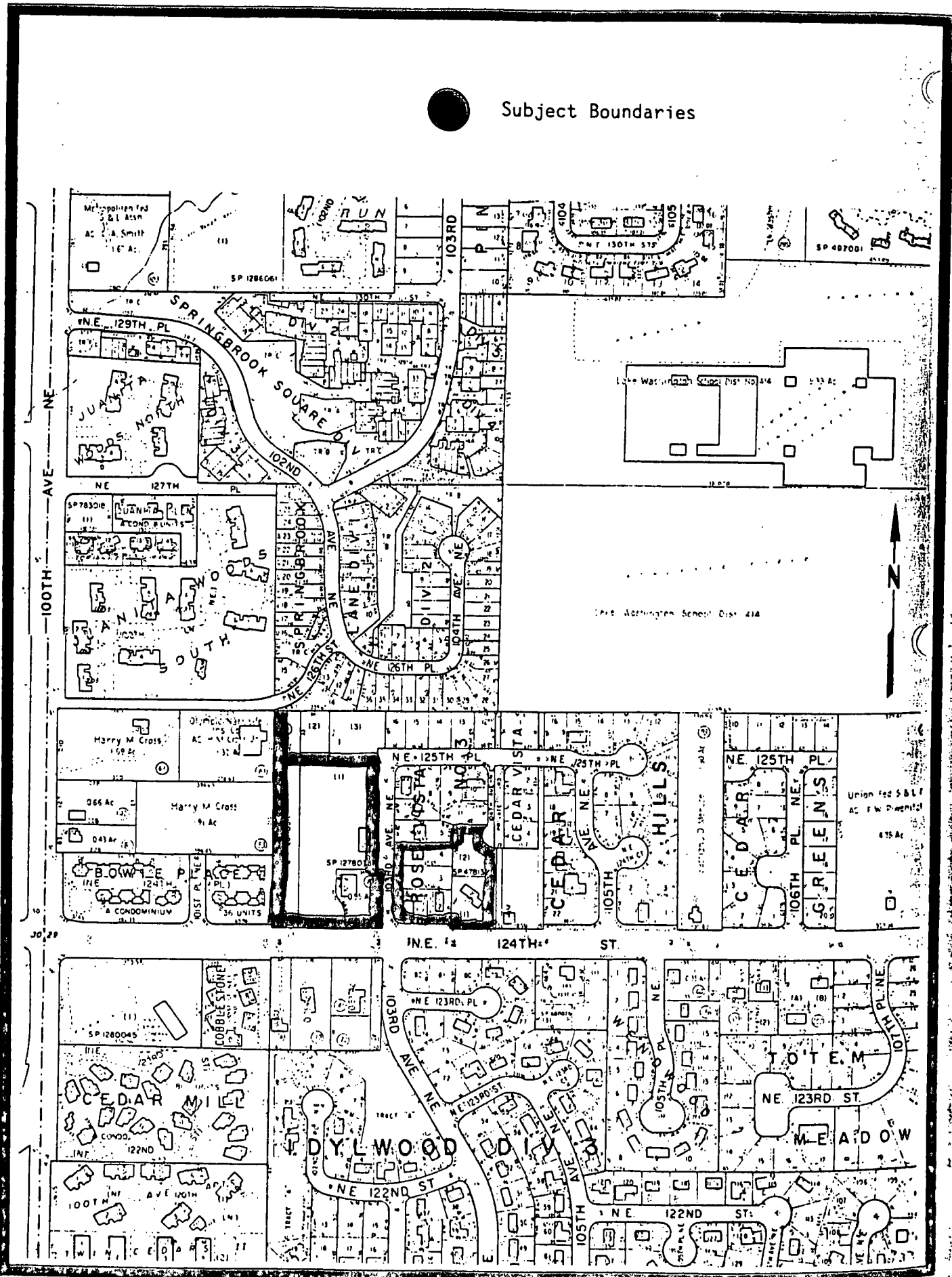

MAYOR

ATTEST:


City Clerk

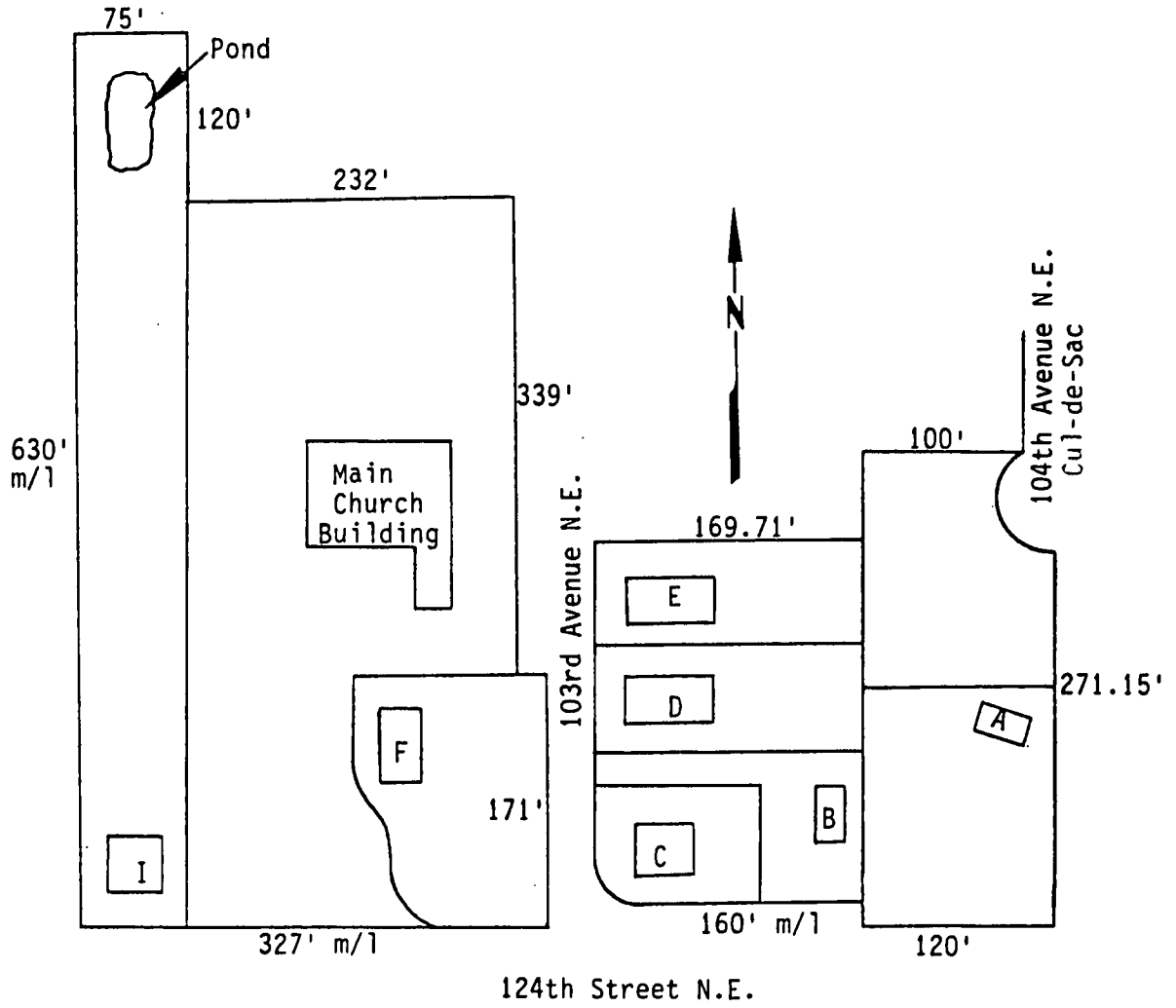
Location Map

Subject Boundaries



Subject Property

TOTAL SUBJECT LAND AREA: 239,270 SQUARE FEET M/L
(5.49 Acres)



RECEIVED

JAN 10 1989

LAW OFFICES OF

FERGUSON & BURDELL

29TH FLOOR, ONE UNION SQUARE
SEATTLE, WASHINGTON 98101
TELEX: 32-0382 FAX: (206) 682-6078

(206) 622-1711

January 10, 1989

VAN EATON, THOMAS,
PHIPPARD AND GORUD
ATTORNEYS - AT - LAW
ANCHORAGE OFFICE
FERGUSON, BURDELL & RUSKIN
RESOLUTION TOWER
1031 WEST 4TH AVENUE
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500 · 108TH AVENUE N.E.
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BELLEVUE, WA 98004
TELEX: 32-1087 FAX: (206) 454-5719
(206) 453-1711

Mr. Ralph I. Thomas
Attorney at Law
Van Eaton, Thomas, Phippard and Gorud
P. O. Box 787
Kirkland, WA 98083

Re: City of Kirkland Option to Purchase

Dear Mr. Thomas:

Pursuant to our conversation last week, this letter will set out our plan for effecting execution of the above-referenced option agreement and forwarding to you for execution by the City. It appears we will not be able to have the original to you by the 17th of January. I know that I had stated we felt that we could indeed have a signed original in your hand in time for your Council meeting on the 17th. This has proven to be impossible, due to a logistical problem we have experienced.

I have forwarded this to International Church of the Foursquare Gospel in Los Angeles, via Federal Express. They are in touch with Lucky Klopp and have advised that they will approve and sign it on Tuesday, January 17, and that we should have it in hand and back to you by January 19, 1989, complete with Exhibits A and B.

Please advise if this is a workable situation for you. If need be, we might obtain a faxed copy of the signed document, though it appears that we would be unable to do so prior to your attendance at the January 17 meeting.

I will look forward to hearing from you, and wish to apologize for any inconvenience this may cause your or your client.

Very truly yours,

FERGUSON & BURDELL

By:

Robin L. McDaniel

RLM:rlm

P.S. I have enclosed a photocopy with date in Section 13.9. Only other changes involved re-pagination around pp 7, 8 & 9, 10.

OPTION AGREEMENT
AND
AGREEMENT OF PURCHASE AND SALE

Optionor:

The International Church of the Foursquare Gospel,
a Non-Profit Corporation

Optionee:

The City of Kirkland, a Code City of the
State of Washington

DATED: _____, 1989

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OPTION AGREEMENT
AND
AGREEMENT OF PURCHASE AND SALE

THIS OPTION AGREEMENT AND AGREEMENT OF PURCHASE AND SALE (hereinafter referred to as the "Agreement") is made and entered into as of this _____ day of _____, 1989, by and between the INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL, a non-profit corporation (hereinafter referred to as the "Optionor"), and the CITY OF KIRKLAND, A CODE CITY OF THE STATE OF WASHINGTON (hereinafter referred to as the "Optionee").

W I T N E S S E T H:

WHEREAS, Optionor owns fee title in and to that certain real property located in the City of Kirkland, King County, Washington, as more particularly described in the legal description attached hereto and made a part hereof as Exhibit "A," together with all of the improvements located thereon (which real property and improvements shall hereinafter be referred to as the "Property"); and

WHEREAS, Optionee desires to obtain an option to purchase the above described Property from Optionor and Optionor desires to grant an option to Optionee, upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual terms, conditions, covenants and promises herein set forth, the studies and investigations to be performed by Optionee, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. OPTION TO PURCHASE; TERM; NO REPRESENTATIONS OR WARRANTIES.

1.1 Option. Optionor hereby grants to Optionee, and Optionee hereby accepts the exclusive option to acquire the Property on the terms and conditions set forth herein. The Optionee's exclusive option to acquire the Property on the terms and conditions set forth herein is hereinafter referred to as the "Option."

1.2 Term. Subject to the provisions of Section 13.9 below concerning the acceptance of this Agreement by Optionee, the Optionee's rights to exercise the Option and purchase the Property as set forth in this Agreement are granted for a period commencing on the date of this Agreement and continuing until 5:00 p.m., Kirkland, Washington, time on March 15, 1990, which shall be the expiration date. In the event Optionee determines that it cannot or will not exercise its Option rights, then and in such event

Optionee shall promptly notify Optionor of such fact in writing and this Agreement and Optionee's Option rights shall terminate.

1.3 Exercise of Option Rights. The Option rights herein contained may be exercised by Optionee by delivering written notice of the exercise of said Option Rights to Optionor on or before 5:00 p.m. Kirkland, Washington, time on the expiration date of the term of this Agreement. The failure of Optionee to exercise the Option rights herein contained by the time and in the manner set forth above shall be deemed to be a termination of this Agreement by Optionee.

1.4 Effect of Exercise. Upon the exercise of the Option rights as specified in Section 1.3, Optionor shall become obligated to convey, and Optionee shall become obligated to acquire, the Property pursuant to and subject to the terms of this Agreement.

1.5 No Warranties. Except as otherwise specifically set forth in this Agreement, or as otherwise set forth in the Deed, the Property is being sold in its present "as-is" and "where-is" condition, and the Optionor makes no representation or warranty to the Optionee, whether express or implied, as to the physical or legal condition of the Property; the existence or absence of structural defects, whether latent or patent; the applicability or effect of, or conformity with, any law, ordinance, statute, rule or regulation; the habitability of the Property or any part or unit thereof; the condition of any personal property; the suitability of any of the Property for its intended use or for the purposes contemplated by the Optionee; the existence or presence of any toxic or hazardous waste or material; or any other matter whatsoever.

2. PURCHASE PRICE; DEPOSIT.

2.1 Purchase Price. The purchase price for the Property shall be One Million, Three Hundred Sixty-Two Thousand Dollars (\$1,362,000.00)

2.2 Deposit. The consideration for this Option is One Hundred Twenty-One Thousand Dollars (\$121,000), the "Deposit". Optionor acknowledges receipt of five thousand dollars in part payment thereof. Upon execution of this Agreement, the Optionee shall pay to Optionor the sum of One Hundred Sixteen Thousand dollars (\$116,000.00) in cash.

2.3 Application of Deposit. The full Deposit shall be applied against the purchase price if this transaction shall close and shall be retained by Optionor as an Option fee in the event this transaction shall not close for any reason other than a default by the Optionor.

2.4 Payment of Purchase Price. The purchase price of the Property shall be paid in cash, or by certified or cashier's

check or federal wire transfer funds or the Optionee's cash warrant on the Closing Date.

3. STUDIES; SURVEY.

3.1 Studies.

(a) Pursuant to the right granted by Optionor under Section 9.1 below, the Optionee shall have the right to prepare, or have prepared, such reasonable market and engineering studies, soils tests, plats, feasibility studies, surveys, resurveys or survey updates, environmental investigations and such other tests, studies or investigations (all of which are collectively referred to as the "Optionee's Studies") with respect to the Property and the Optionee's plans for development of the Property. Optionee shall be solely responsible for costs of all such Optionee's Studies. The Optionee represents and warrants to Optionor that Optionee, or a duly authorized agent, employee or contractor of Optionee has, or will, fully inspected the Property, and Optionee has decided to offer to purchase the Property and will exercise its Option rights based upon its own independent review and investigation of the Property and that Optionee is purchasing the Property on an "as-is" and "where-is" basis, in its current condition without relying on any statement made by or information provided by Optionor or anyone purporting to represent Optionor and without relying on any sales brochures or supplemental sales brochures, if any, issued in connection with the Property. Except as expressly set forth herein, Optionee acknowledges that Optionor has made no representation of any kind, directly or indirectly, in connection with the Property or the use or habitability thereof upon which Buyer has relied, directly or indirectly. This warranty shall survive the Close of Escrow.

4. PRELIMINARY COMMITMENT FOR TITLE INSURANCE; STATUS OF TITLE; MORTGAGEE'S TITLE INSURANCE.

4.1 Preliminary Commitment.

(a) Within thirty (30) days of the date of this Agreement, the Optionor shall deliver to Optionee, and its attorneys, a preliminary commitment for standard purchaser's title insurance covering the Property, continued down to date, together with legible copies of all exceptions shown therein, showing the Optionor's title to the Property to be good, marketable and insurable (which commitment is hereinafter referred to as the "Preliminary Commitment"), which Preliminary Commitment shall be issued by such title insurer as is mutually agreeable to Optionor and Optionee (which title insurer is hereinafter referred to as the "Title Company"). The Optionee shall pay for any survey required by the Title Company for the issuance of the above Preliminary Commitment or the title policy required hereunder.

(b) Within twenty (20) days of its receipt of the Preliminary Commitment, the Optionee shall notify Optionor in writing of any exceptions thereto which are wholly or conditionally unacceptable to Optionee, which notice shall set forth in reasonable detail the reasons for any disapproval and, if appropriate, the conditions which must be met which will make conditionally unacceptable exceptions fully acceptable to Optionee.

4.2 Conditions of Conveyance. It is understood and agreed that the Property shall be sold and conveyed subject to only such encumbrances, liens and title defects as are approved by Optionee pursuant to Sections 5.1 above or 5.3 below and together with those liens, liabilities and encumbrances against the Property arising through or created by Optionee.

4.3 Objections to Title. The Optionor shall, prior to or at the Closing Date, at its sole cost and expense, undertake (by the exercise of its reasonable efforts and with due diligence) to remove, eliminate or modify the above-referenced unacceptable exceptions to the reasonable satisfaction of Optionee; provided, that in the event the Optionor is unable or unwilling to cure such objections to title, the Optionor shall so advise Optionee in writing within thirty (30) days following the date of receipt of Optionee's notice of disapproved exceptions described in Section 5.1(b) above and thereafter Optionee shall have thirty (30) days within which to make an election to accept the Optionor's title or terminate and cancel this Agreement, which election shall be made in writing to the Optionor within said thirty (30) day period. A failure to provide the Optionor with such written election within said thirty (30) day period shall be deemed an election by Optionee to accept the status of the Optionor's title. Upon such termination the rights and obligations of the parties, one to the other, shall terminate and the Deposit shall be retained by the Optionor.

4.4 Use of Purchase Price. The purchase price to be paid by Optionee to Optionor at closing may be used by Optionor to remove any liens, liabilities or encumbrances which Optionor is to have removed.

4.5 Defects in Title.

(a) Subsequent to Optionee's exercise of its Option rights hereunder, and in the event the Optionor shall be unable to convey title to the Property at the Closing Date in accordance with the terms and conditions of this Agreement, Optionee shall, at its election and in addition to its other remedies under this Agreement, have the right to accept such title as the Optionor is able to convey or terminate this Agreement and have returned all Deposits paid by Optionee to Optionor hereunder; provided, that in the event Optionee shall elect to terminate this Agreement, it shall first provide written notice of such election to the Optionor, which notice shall set forth in detail the objections to

the Optionor's title and the Optionor shall have thirty (30) days from the date of receipt of such notice within which to cure such defect in title or remove the same as an exception to the policy of title insurance which Optionee shall receive hereunder; and, provided, further, that it is understood and agreed that Optionee's right to terminate under this Section 5.5(a) shall be exercised only if the defect or other matter affecting Optionor's title was not approved by Optionee pursuant to Section 5.3 above. Upon the successful removal of such exception or cure thereof within the above thirty (30) day period, Optionee's election to terminate shall expire and this Agreement shall promptly close within ten (10) days. It is understood and agreed that such thirty (30) day period shall extend the Closing Date.

(b) In the event the Optionor shall be unable to cure or remove such objection to title within the above thirty (30) day period, then Optionee shall have the right to waive said objection to title or this Agreement shall terminate and Optionee shall have returned the Deposit, and this Agreement shall be deemed null and void and of no force and effect.

5. RELEASE AND WAIVER HAZARDOUS TOXIC WASTE.

5.1 Waiver. Optionee hereby waives any claim it may now have or may hereafter acquire against Optionor based upon, arising out of, or in any way related to toxic, dangerous or hazardous waste or substance as the same are now or may hereafter be defined by any applicable law or regulation and Optionee does release Optionor from any liability to Optionee based upon, arising out of, or in any way related to toxic, dangerous or hazardous waste or substance as the same are now or may hereafter be defined by any applicable law or regulation.

5.2 Consideration. As consideration for the foregoing waiver, Optionor warrants to Optionee that Optionor has no actual knowledge as of the time of signing this Agreement of facts or other information indicating the presence of toxic, dangerous or hazardous waste or substance on the subject property, nor of facts or information which would put a reasonable person on notice of the likelihood of such presence. This warrantee shall survive the closing of this Agreement.

6. CREATION OF ESCROW.

6.1 Closing. Closing shall take place through the office of Van Eaton, Thomas, Phippard & Gorud, attorneys for the City of Kirkland herein referred to as the "Closing Agent" (which shall be herein referred to as the "Closing Agent"). The deed and other documents and instruments to be delivered upon the terms and conditions hereof.

6.2 Escrow Instructions. The parties hereto agree to execute and deliver escrow instructions and such other reasonable

documents and instruments as may be required by the Closing Agent to consummate this transaction pursuant to the terms hereof and to convey the Property from Optionor to Optionee; provided, that it is specifically understood and agreed that the escrow instructions so executed and delivered shall not in any way supersede or replace the terms and provisions of this Agreement, but shall be deemed to be supplemental to the terms hereof and a means of carrying out and consummating the transaction contained in this Agreement.

6.3 Deposits by Optionor. In the event the Option rights herein contained shall be exercised by the time and in the manner set forth above, the Optionor shall deposit with the Closing Agent, on or before the Closing Date, the following documents:

(a) Fully executed and acknowledged Statutory Warranty Deed covering the Property which Deed shall be in form sufficient for recording and subject only to those exceptions in the Preliminary Commitment acceptable to Optionee as set forth above conveying fee title to the Property to Optionee.

(b) A commitment from the Title Company to issue a standard Policy of Purchaser's Title Insurance covering the Property and insuring the Optionee in an amount equal to the full purchase price with no exceptions other than those approved by Optionee under Section 4 above.

6.4 Deposits by Optionee. In the event the Option rights herein contained shall be exercised, Optionee will deposit with the Closing Agent, on or before the Closing Date hereof, cash, cashier's or certified check, federal wire transfer funds or Optionee's cash warrant in the amount of the purchase price described above, less the sum of the Deposits made by Optionee hereunder, together with such other sums as are required to pay the Optionee's closing costs.

6.5 Closing Costs.

(a) At closing, the Optionee shall pay all costs and expenses of closing (except any cost or expense required to be paid in order to clear title of Seller) including title insurance premiums.

6.6 Date of Closing. The Closing Date of this transaction shall occur within forty-five (45) days after Optionee's exercise of the Option rights herein contained, as set forth in Section 1.3 above.

6.7 Possession. Subject to Optionor's rights of entry set forth in Section 7 below, Optionee shall be entitled to have possession of the Property on the Closing Date.

7. RIGHT OF ENTRY.

7.1 Entry. The Optionor hereby grants to Optionee and Optionee's employees, agents and contractors, the right to enter upon the real property portion of the Property at any reasonable time and from time to time during the term of this Agreement for the purpose of conducting therein and thereon, and making, such reasonable Optionee's Studies which Optionee may deem necessary or appropriate with respect to the Property.

7.2 Indemnity. Optionee shall indemnify and hold Optionor harmless from and against any injury, damage, claim, lien, cost and/or expenses (including reasonable attorneys' fees), and unreasonable disruption of, or the constructive eviction of, any tenant of the Property incurred by, or claimed against, the Optionor or the Property by reason of any entry by Optionee or Optionee's agents, employees or contractors upon the real property portion of the Property and/or by reason of any work done upon the real property portion of the Property pursuant to this Section.

8. EMINENT DOMAIN.

8.1 Taking. If prior to the date of closing all or a substantial part of the Property is taken or threatened with taking by the power of eminent domain then Optionee may, by written notice to the Optionor, within ten (10) days of the date of notification to Optionee of such taking, or threat thereof, elect to terminate this Agreement. In the event that Optionee shall so elect, both parties shall be relieved of and released from any further liability hereunder, and Optionor shall cause to be returned all the deposits and payments paid pursuant to this Agreement, together with interest earned in Escrow thereon.

8.2 Assignment of Awards. Unless this Agreement is so terminated, it shall remain in full force and effect and if closing shall occur, the Optionor shall assign, transfer and set over to Optionee all the Optionor's right, title and interest in and to any awards that may be made for such taking and there shall be no adjustment in the purchase price. The legal description of the Property shall be adjusted at closing to delete any of the Property so taken.

8.3 Definition. For the purpose hereof, the words "substantial part" shall mean an amount in excess of ten per cent (10%) of the Property or a taking which impairs access to and from adjacent streets or highways.

9. FORM OF DEED.

Title to the Property shall be conveyed by Statutory Warranty Deed in proper statutory form for the record, and shall be duly executed and acknowledged by the Optionor, free from all encumbrances except as herein stated.

10. NOTICES.

Any notices required or desired to be given under this Agreement shall be in writing and personally served or given by mail. Any notice or payment given by mail shall be sent, postage prepaid, by certified mail, return receipt requested and addressed to the party to receive the same at the following address or at such other address or addresses as the parties may from time to time direct in writing:

OPTIONOR:

International Church of the
Foursquare Gospel
P. O. Box 536
Kirkland, WA 98083-0536

Attention: Lucky Klopp

With a copy to:

Richard U. Chapin
Ferguson & Burdell
2100 Koll Center Bellevue
500 - 108th Avenue N.E.
Bellevue, WA 98004

OPTIONEE:

City Manager
The City of Kirkland
123 - 5th Avenue
Kirkland, WA 98033-6189

Any notice shall be deemed to have been given if personally delivered, when delivered, and if mailed, forty-eight (48) hours after deposit at any post office in the United States of America, postage prepaid certified mail with return receipt requested and addressed to the party to receive the same as set forth above.

11. ASSIGNMENT.

Optionee shall not have the right to assign this Agreement and/or all or any part of its interest under this Agreement without the prior written approval of the Optionor, which approval may be withheld for any reason. Upon such assignment the Optionee shall remain liable for all obligations under this Agreement incurred prior to the date of such assignment, the Assignee shall assume all obligations and obtain all benefits hereunder from and after the date of Assignment.

12. DEFAULT.

12.1 General. It is agreed that the Optionor and Optionee are unable to accurately project the damages which will be sustained by either party in the event of a default by Optionee hereunder and the damages provided for in such event are a good faith effort by both parties to reasonably estimate and establish those damages (including damages incurred from removing the Property from the open market prior to default hereunder) and such damages shall not be considered or deemed to be a penalty. For the purposes hereof, a monetary default shall be deemed a default.

13. MISCELLANEOUS.

13.1 Entire Agreement. This Agreement constitutes the entire Agreement between the parties and all prior and contemporaneous negotiations, understandings and agreements, whether oral or written, are merged herein and the rights and obligations of the parties shall be as set forth herein.

13.2 Binding Nature. All rights and obligations arising out of this Agreement shall inure to the benefit of and binding upon the respective successors, heirs, assigns, administrators, executors and marital communities, if any, of the parties hereto.

13.3 Washington Law. This Agreement shall be construed, interpreted and enforced pursuant to the laws of the State of Washington and the parties agree that the Superior Court of King County for the State of Washington shall have sole and exclusive jurisdiction of any suit or proceeding brought with respect to this Agreement or the Property.

13.4 Attorney's Fees. In the event any action or legal proceedings are commenced to enforce any of the terms and conditions hereof, or to terminate this Agreement (whether the same shall proceed to judgment or otherwise), the prevailing party shall receive from the other a reasonable sum as attorneys' fees together with costs.

13.5 Time. Time is of the essence hereof.

13.6 Captions. The captions and Section headings hereof are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any section.

13.7 Invalidity. If any provisions of this Agreement shall be invalid, void or illegal, it shall in no way affect, impair or invalidate any of the other provisions hereof.

13.8 Counterparts. This Agreement may be signed in counterparts, any one of which shall be deemed an original.

13.9 Acceptance and Date of Agreement.

(a) This Agreement must be executed by the Optionee, and a signed copy delivered to Optionor, on or before 5:00 p.m. Kirkland, Washington, time, on January 19, 1989, or all of the terms and conditions set forth in this Agreement shall terminate and be null and void and of no force or effect.

(b) Subject to Section 13.9(a) above, the date of this Agreement shall be the date on which the last party executes this Agreement. Said date shall be inserted on page one hereof when such date is determined.

13.10 Recording. Neither party shall have the right to record this Agreement or a memorandum or short form hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year set forth opposite their respective names.

OPTIONOR:

INTERNATIONAL CHURCH OF THE
FOURSQUARE GOSPEL, a Non-
Profit Corporation

Date: _____, 1989

By: _____
Its _____

Address:

OPTIONEE:

THE CITY OF KIRKLAND

Date: _____, 1989

By: _____
Its _____

Address: _____

STATE OF WASHINGTON)
 : ss.
County of King)

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

On this _____ day of _____, 1989, before me personally appeared _____, to me known to be the _____ of INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL, a Non-Profit Corporation, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

WITNESS my hand and seal hereto affixed the day and year first above written.

Notary Public in and for the
State of Washington, residing
at _____
My commission expires _____

STATE OF WASHINGTON)
 : ss.
County of King)

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

On this _____ day of _____, 1989, before me personally appeared _____, to me known to be the _____ of THE CITY OF KIRKLAND, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

WITNESS my hand and seal hereto affixed the day and year first above written.

Notary Public in and for the
State of Washington, residing
at _____
My commission expires _____

EXHIBIT A
Legal Description

EXHIBIT B

Survey

