

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, CONCERNING THE COLUMBIA STREET DOWNTOWN HOUSING PROJECT, AUTHORIZING THE CITY MANAGER TO PREPARE AND SIGN THE NECESSARY DOCUMENTS TO CLARIFY THE CITY'S CONTRIBUTION TOWARD REMEDIATION, THE PROTECTIONS THE CITY WILL RECEIVE AND THE AREA TO BE COVERED BY THE RESTRICTIVE COVENANT ON THE PROPERTY.

WHEREAS, the City of Olympia is the previous owner of property located on Columbia Street between 4th and 5th Avenues in downtown Olympia, which, except for certain exceptions, is generally comprised of Lots 1, 4, 5 and 8 of Block 5 of Sylvester Plat of Olympia as recorded in Volume 1 of Plats, Page 14, records of Thurston County, Washington ("Property"); and

WHEREAS, the terms of the sale of the Property included the City retaining an interest in the Property through a restrictive covenant set forth in the Statutory Warranty Deed that limits the use of the Property to a mixed use development comprised of: a commercial/retail/office component at street level; a market rate multi-family residential component; and associated parking; and

WHEREAS, the Berschauer Group has asked the City of Olympia to revise the restrictive covenant on the Property to allow for a smaller scale housing project that covers approximately half of the Property and is not required to have a commercial/retail/office component; and

WHEREAS, the Berschauer Group is seeking assurances that the City will also participate in the environmental remediation that must be performed as a part of the housing project; and

WHEREAS, the City's goal of revitalizing the downtown area will be furthered by the development of market rate housing on the Property; and

WHEREAS, the City is interested in furthering a cleanup in the downtown area, resolving potential City liabilities associated with the environmental conditions of the Property and the "Site" as that term is defined in the Model Toxics Control Act (MTCA), Chapter 70.105D RCW, and in determining the amounts other parties should contribute toward the cleanup of the Site.

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE AS FOLLOWS:

The City Manager is authorized to negotiate, finalize and execute all necessary documents that would implement the following conditions and provisions:

1. The restrictive covenant concerning the Property would be amended to: (a) release Lots 1 and 4 from the area covered by the covenant; (b) remove the requirement for commercial/retail/office at street level; and (c) allow the development to be limited to only one-half of the Property (lots 5 and 8) as long as the development on the covered property includes a minimum of 30 residential units.
2. The City and the Berschauer Group would share equally in the cost of the environmental remediation at the Site with the City's contribution being capped at \$450,000 (\$237,000 of which will come from the existing escrow account and the remainder from other City funds).
3. The City's obligation to begin reimbursement of environmental remediation costs will not start until after the Berschauer Group has expended Twenty-five Thousand and No/100 Dollars (\$25,000) on actual soil remediation on the Property, at which point the \$25,000 remediation costs could be submitted as a request for a Twelve Thousand Five Hundred and No/100 Dollars (\$12,500) reimbursement.
4. The City's obligation to share in the cost of remediation on a dollar-for-dollar basis will be limited to a five-year period beginning on the effective date of the modified restrictive covenant in the deed. Remediation costs that may be included in a request for reimbursement during that five-year period include cleanup costs associated with project utilities work in the right-of-way adjacent to the Property.
5. The document or documents clarifying the process by which the City will agree to reimburse 50% of the remediation costs associated with the Site up to a maximum of Four Hundred Fifty Thousand and No/100 Dollars (\$450,000) will require that the developer provide adequate documentation of remediation work completed, an opportunity for the City to challenge costs and a dispute resolution process to cover unresolved reimbursement requests. If remediation costs are not adequately documented, the City may refuse to reimburse those costs.
6. The City would release the Berschauer Group from any claims the City may have in the future for costs the City may incur addressing contamination related to the Site as a part of performing utility work in the adjacent right-of-way.
7. The Berschauer Group and any related entity with ownership interest in the Property would indemnify and hold harmless the City from any third-party claims associated with the environmental conditions on the Property.
8. The Berschauer Group and any related entity with ownership interest in the Property would release the City from any claims they may have concerning the environmental condition of the Site, including for reimbursement for remediation work concerning the Site, that would exceed the agreed upon limit of \$450,000 for the City's total contribution toward remediation costs associated with the Site.

9. If the Berschauer Group or any related entity with ownership interest in the Property pursues cost recovery for remediation costs from the original sources of the environmental contamination, the City will cooperate and participate as a party, but will not commit, at this point, to providing financial support for such an action.
10. The documents amending the restrictive covenant would provide that the Berschauer Group and any related entity with an ownership interest in the Property would not transfer any portion of the Property in the future without, first, providing advance notice to the City of a proposed transfer, and second, including in the transfer documents a release from the prospective purchasers of all claims against the City related to the environmental conditions of the Site and an agreement to indemnify and hold harmless the City from any third-party claims associated with the environmental conditions on the Property.
11. The documents implementing the above conditions and provisions shall also provide that any proposed project for the Property must meet all applicable code provisions and development regulations and that nothing in the documents is intended to waive any applicable requirements or guarantee the issuance of any permit.

By resolution, the Olympia City Council concurs with the above conditions and provisions and directs the City Manager to prepare the necessary legal documents to implement the above conditions and provisions. This Resolution does not create a legally enforceable document, and does not have any impact on the existing restrictive covenant or other legal documents that have already been entered into by the City concerning the Property. The above conditions and provisions will only become effective through legal documents that may be executed by the City Manager pursuant to this Resolution.

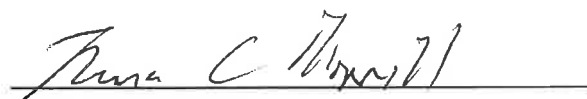
PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of November 2012.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY