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## OPTION AGREEMENT FOR PURCHASE AND SALE OF BONUS FLOOR AREA

This Option Agreement for Purchase and Sale of Bonus Floor Area (the "Agreement") is made by and between Bellevue Downtown Development LLC, a Delaware limited liability company (the "Buyer"), and the City of Bellevue, a Washington municipal corporation (the "Seller"), and is effective and dated this \_\_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date"). Seller and Buyer desire to enter into this Agreement for Buyer to purchase from Seller certain transferable bonus floor area created pursuant to the Bellevue Land Use Code ("LUC") section 20.25A.070.F.

Now therefore, in consideration of the mutual promises and considerations set forth below, the parties hereto do agree as follows:

### TERMS

**1. Option for Purchase and Sale of Bonus Floor Area.** Seller hereby grants to Buyer an option (the "Option") to acquire, pursuant to the terms of this Agreement, up to One Hundred Sixty-Two Thousand One Hundred (162,100) square feet of bonus floor area ("Bonus Floor Area"). Buyer may exercise its option hereunder, in its sole discretion, in accordance with Section 5.

**2. Bonus Floor Area Warranties.** Seller represents and warrants to Buyer that, as of the date of execution of the Agreement:

2.1 Seller is entitled to convey the Bonus Floor Area under the City of Bellevue Land Use Code, and Seller is the bona fide owner of the Bonus Floor Area; and

2.2 Seller has met all requirements under the Bellevue Land Use Code as of the date hereof, necessary to generate the Bonus Floor Area described in Section 1 above by constructing "major public open space" improvements ("MPOS") at property located at the southeast corner of the intersection of NE 6<sup>th</sup> Street and 110<sup>th</sup> Avenue NE (the "City Property") (commonly known as "City Hall Plaza"); and

2.3 As of the date of this Agreement, the Bonus Floor Area may be applied to projects within a defined area of the Downtown, as set forth in LUC Section 20.25A.070.F and described as the area bounded by Bellevue Way, 112<sup>th</sup> Avenue NE, NE 4<sup>th</sup> Street and NE 8<sup>th</sup> Street, to allow development in excess of the otherwise applicable floor area ratio (FAR) limitations for zoning districts within that area; and

2.4 Buyer intends to purchase the Bonus Floor Area to use in its proposed Cloudevue Project located at 10855 NE 8<sup>th</sup> Street, Bellevue, Washington, 98004 ("Project" or "Buyer's Project"). Bonus Floor Area may only be used to exceed max FAR in Project FAR calculations consistent with the requirements in the Bellevue Land Use Code (LUC) 20.25A.070.F. Buyer shall only be entitled to purchase the amount of Bonus Floor Area that is approved for use in the Project pursuant to its approved Design Review (and any subsequent modification thereof pursuant to LUC 20.30.F.175) up to the maximum amount listed in Section 1.

3. **Purchase Price.** Buyer agrees to pay a purchase price of Seventy-Five Dollars (\$75.00) for each square foot of Bonus Floor Area purchased hereunder (the "Purchase Price"). If all 162,100 square feet of the Bonus Floor Area is purchased, the total Purchase Price will be Twelve Million, One Fifty-Seven Thousand, and Five Hundred Dollars (\$12,157,500.00).

4. **Payment of Option Premium.** Buyer agrees to pay an initial option premium of Six Hundred Seven Thousand Eight Hundred Seventy Five Dollars (\$607,875.00) (the "Initial Option Premium Payment") and thereafter to pay annually the amount of One Hundred Eighty Two Thousand Three Hundred Sixty Two Dollars and Fifty Cents (\$182,362.50) (each annual payment, an "Option Maintenance Payment") until the earlier of the (i) the execution of the option ("Option Completion Date"); or (ii) the date upon which the Term of the Agreement expires ("Term Expiration Date"), for a maximum combined option premium of One Million Three Hundred Thirty Seven Thousand Three Hundred Twenty Five Dollars (\$1,337,325.00). The Initial Option Payment and the Option Maintenance Payments collectively shall be referred to as the "Option Premium Payments." No later than three (3) business days after execution of this Agreement by Seller with respect to the Initial Option Payment, and on or before each anniversary of the Effective Date through the Option Completion Date or the Term Expiration Date with respect to the Option Maintenance Payments, Buyer will deposit each Option Premium Payment with First American Title Insurance Company, 920 5th Ave Suite 1250, Seattle, WA 98104, Attn: Crystal Flood (the "Closing Agent"), payable to the order of Closing Agent. Except as otherwise set forth herein, each Option Premium Payment shall be immediately deemed fully earned by Seller and nonrefundable to Buyer. The Option Premium Payments shall not be applied toward the Purchase Price. If Buyer fails to purchase any portion of the Bonus Floor Area, Seller's exclusive remedy shall be to retain the Option Premium Payment as liquidated damages.

5. **Closing.**

5.1 Closing of the sale of the Bonus Floor Area to Buyer ("Closing") shall take place following delivery of a written notice ("Exercise Notice") from Buyer to Seller specifying the number of square feet of Bonus Floor Area that Buyer elects to purchase, subject to the terms of Section 2.4 herein. No Exercise Notice may be provided until after Buyer has submitted a complete building permit application (pursuant to BCC 23.05.090.F) for Buyer's Project and made payment of all applicable fees. The sale of the Bonus Floor Area (or portion thereof) shall close on a date ("Closing Date") selected by Buyer in the Exercise Notice. The Closing Date shall be no less than thirty (30) and no more than sixty (60) calendar days following the date upon which the Exercise Notice is

provided to Seller. No building permit shall issue under BCC 23.05.100 prior to Closing.

5.2 Buyer shall pay all cash at Closing in the amount of the Purchase Price, to the extent applicable hereunder.

5.3 Closing shall occur at the offices of the Closing Agent. Buyer shall pay all costs related to Closing and recording, with the exception of any real estate excise tax due on the conveyance of the Bonus Floor Area, which shall be paid by Seller. Buyer and Seller shall deliver such reasonable instructions and documents as required to effect Closing.

5.4 At Closing, Seller shall transfer and convey to Buyer the number of square feet of Bonus Floor Area specified in Buyer's Exercise Notice, through mutual execution and delivery to Buyer of the instrument of transfer entitled Transfer of Bonus Floor Area (Major Public Open Space) in the form attached hereto as Exhibit A, free and clear of liens or encumbrances of any kind (the "Transfer Document"). The parties shall coordinate the execution of the Transfer Document by Buyer and Seller prior to the applicable Closing Date. Building or use restrictions general to the district, encumbrances on the title of any property to which Buyer seeks to apply the Bonus Floor Area, and building or zoning regulations or any provisions of the Bellevue Land Use Code shall not be deemed encumbrances or defects under this Agreement.

5.5 Title insurance shall not be required, but if obtained, shall be at Buyer's expense. If Buyer elects to obtain title insurance or a title report, Buyer shall order such report or preliminary commitment for title insurance within 30 days of the Effective Date of this Agreement. Buyer shall provide a copy of any title report or commitment to Seller promptly upon receipt. If any title report or commitment shows any specific adverse interest or encumbrance affecting the Seller's title to the Bonus Floor Area, and Buyer gives notice of such defect or encumbrance to Seller no later than thirty (30) days after receipt of such title report or commitment, and Seller fails to commit within fifteen (15) days after receipt of such notice from Buyer to remove or warrant against such defect or encumbrance, Buyer shall have the right to terminate this Agreement by notice in writing to Seller, without liability of either party, and the Option Premium Payment shall be returned to Buyer. If Buyer does not give notice of termination within five (5) days after the expiration of such fifteen day period (or five days after Seller gives notice that it will not cure a defect or encumbrance, if earlier) then Buyer shall proceed to Closing and shall be deemed to have waived any claims Buyer may have with respect to said defect or encumbrance. The Closing Date shall be postponed, if necessary to accommodate the foregoing time periods.

**6. Conditions to Closing.** Buyer's obligations under this Agreement are specifically conditioned upon satisfaction, prior to Closing, of the following conditions:

6.1 Each and every representation and warranty of Seller shall be true, correct and complete as if made as of the Closing Date for the portion of Bonus Floor Area subject to the Closing.

6.2 As of the Closing Date, Seller shall have fully performed and

satisfied each and every obligation, term and condition to be performed and satisfied by Seller under this Agreement for the portion of the Bonus Floor Area subject to Closing.

**7. Maintenance of the Bonus Floor Area.**

Seller covenants and agrees as follows:

7.1 **Transfer.** Until such time as this Agreement is terminated or consummated, Seller shall not offer to sell, or sell, mortgage, pledge, hypothecate, encumber or otherwise transfer or dispose of all or any part of the Bonus Floor Area committed under this Agreement or any interest therein to any third party.

7.2 **Compliance.** Seller shall comply with all federal, state, municipal and other governmental laws, ordinances, requirements, rules, regulations, notices and orders, and all agreements, covenants, conditions, easements and restrictions relating to the Bonus Floor Area, including the obligations to design, build, operate, maintain the City Hall Plaza.

7.3 **Notices.** Seller shall promptly deliver to Buyer copies of any written notices received by Seller relating to or affecting the Bonus Floor Area.

**8. Representations and Warranties.**

8.1 **Seller's Representations and Warranties.** Seller represents and warrants to Buyer that as of the date of this Agreement and as of the Closing Date that:

(a) **Authority, etc.** The City of Bellevue is a Washington municipal corporation, duly organized and validly existing under the laws of the State of Washington and is in good standing under the laws of the State of Washington, and has, to the best of Seller's knowledge, full power and lawful authority to enter into and carry out the terms and provisions of this Agreement and to execute and deliver all documents which are contemplated by this Agreement. All actions necessary to confer such power and authority upon the persons executing this Agreement (and all documents which are contemplated by this Agreement to be executed on behalf of Seller) have been taken. To the best of Seller's knowledge, Seller's execution, delivery and performance of this Agreement will not result in any violation of, or default under, or require any notice or consent under, any document by which Seller is organized, any agreement to which Seller is a party or by which Seller, the Bonus Floor Area is bound, or any law, rule, regulation or order applicable to Seller or the Bonus Floor Area. The documents to be delivered at Closing will be duly authorized, executed and delivered by Seller and, to the best of Seller's knowledge, will be the legal, valid and binding obligations of Seller. This Agreement is enforceable against Seller in accordance with its terms, and each instrument to be executed by Seller pursuant to this Agreement or in connection herewith will, when executed and delivered, be enforceable against Seller in accordance with its terms.

(b) **No Other Agreements.** Seller has not entered into any agreement to dispose of its interest in the Bonus Floor Area committed under this Agreement or any part thereof.

(c) **Proceedings.** To the best of Seller's knowledge, there is no action, suit, proceeding, reassessment, arbitration or investigation pending or threatened by or against Seller in connection with the Bonus Floor Area, or against the Bonus Floor Area or any part thereof, before any court or governmental department, commission, board, agency or instrumentality.

(d) **Violations.** Seller has not received from any governmental authority notice of any violation of any statute, ordinance, rule, regulation or order applicable to the Bonus Floor Area, or any part thereof, that will not have been corrected prior to Closing.

8.2 **Buyer's Representations and Warranties.** Buyer represents and warrants to Seller that as of the date of this Agreement and as of the Closing Date that:

(a) **Authority, etc.** Buyer is a Delaware limited liability company, duly organized and validly existing under the laws of the State of Delaware and is in good standing under the laws of the State of Delaware, and has full power and lawful authority to enter into and carry out the terms and provisions of this Agreement and to execute and deliver all documents which are contemplated by this Agreement. All actions necessary to confer such power and authority upon the persons executing this Agreement (and all documents which are contemplated by this Agreement to be executed on behalf of Buyer) have been taken. To the best of Buyer's knowledge, Buyer's execution, delivery and performance of this Agreement will not result in any violation of, or default under, or require any notice or consent under, any document by which Buyer is organized, any agreement to which Buyer is a party or by which Buyer, is bound, or any law, rule, regulation or order applicable to Buyer. The documents to be delivered at Closing will be duly authorized, executed and delivered by Buyer and, to the best of Buyer's knowledge will be the legal, valid and binding obligations of Buyer.

(b) **Buyer's Investigation.** Buyer acknowledges and agrees that it has been or will be given a full opportunity to investigate every aspect of the Bonus Floor Area, including all matters related to legal status or requirements and other matters of significance. Buyer is not relying upon any statement or representation by Seller unless such statement or representation is specifically embodied in this Agreement or the Exhibit attached hereto.

(c) **Commencement of Construction Within Five (5) Years.** Buyer acknowledges and agrees that this transaction is intended to support and advance development outcomes in Downtown Bellevue within the next five (5) years. Buyer has submitted a project timeline as part of its proposal documenting that it can reach construction within the five-year window.

8.3 **No. Liability for Exception Matters.**

(a) As used herein, the term "Exception Matter" shall refer to (i) a fact disclosed to Buyer by Seller in writing prior to or after the Effective Date that

would make a representation or warranty of Seller contained in this Agreement untrue or incorrect, or (ii) a fact discovered by Buyer after the Effective Date that would cause a reasonable person to conclude that a representation or warranty of Seller contained in this Agreement is untrue or incorrect. If Seller discloses or Buyer discovers any Exception Matter, Seller shall within five (5) days of mutual notice of such Exception Matter (the "Election to Cure Period") notify Buyer whether Seller will cure same on or before a Closing. If Seller does not so notify Buyer within the Election to Cure Period that Seller has elected to cure such Exception Matter, then Buyer may, by written notice to Seller within five (5) days after expiration of the Election to Cure Period, terminate this Agreement and receive a return of the Option Premium Payment.

(b) Either party shall promptly notify the other party in writing of any Exception Matter of which the first party obtains knowledge before a Closing. If Buyer nonetheless elects to proceed with the acquisition of the Bonus Floor Area, Buyer shall consummate the acquisition of the Bonus Floor Area subject to such Exception Matter and Seller shall have no liability with respect to such Exception Matter, notwithstanding any contrary provision, covenant, representation or warranty contained in this Agreement. Buyer's failure to give such notice within the Election to Cure Period shall be deemed a waiver by Buyer of such Exception Matter. Seller shall have no obligation to cure or remedy any Exception Matter and Seller shall have no liability whatsoever to Buyer with respect to any such Exception Matter. The Closing Date shall be postponed as necessary to accommodate the time periods in this Section 8.3.

(c) The provisions of this Section 8.3 shall not apply to the warranties of Section 2 above. The failure of a representation or warranty in Section 2 to be true or correct shall be deemed a default by Seller under this Agreement.

8.4 **Survival.** The foregoing warranties and representations shall be true and complete on the Closing Date for such portion of the Bonus Floor Area subject to the Closing and shall survive the Closing for a period of two (2) years.

8.5 **Transfer/Assignment.** Buyer may not assign or transfer the right to purchase all or a portion of the Bonus Floor Area under this Agreement to any other party except to a subsequent owner of the property upon which Buyer's Project is located or an Affiliate. For the purposes of this Agreement an "Affiliate" shall mean any parent, subsidiary, affiliate or successor of Buyer, or any entity into which Buyer may be merged or consolidated or which purchases all or substantially all of the assets of Buyer. Any purported transfer or assignment in violation of this provision shall be null and void and at Seller's election, constitute a default.

## **9. Remedies.**

9.1 **Default.** If either party fails to perform its obligations when due under this Agreement, such party shall be in default. If Buyer is in default, Seller's exclusive remedy shall be to retain the Option Premium Payment. If Seller is in default, Buyer may either demand and receive the return of the Option Premium Payment or may

maintain an action for specific performance. Buyer and Seller waive any claim for consequential damages that one party may have against the other for breach or failure to perform or observe the requirements and obligations created by this Agreement. By way of illustration only and not by way of limitation, consequential damages shall include lost profits, lost business opportunities, interference with business or contractual expectancies, loss of equity in property, or any speculative or remote damages.

9.2 **Vested Status of Certain Bonus Floor Area.** Following issuance of the Project's Design Review and/or Master Development Plan, no amendment to the Land Use Code shall impair, diminish, limit or otherwise preclude the use of the Bonus Floor Area approved as part of the Design Review and/or Master Development Plan, for so long as such project maintains its vested approval, to the extent allowed by law. No such amendment to the Land Use Code shall relieve Seller's obligation to sell the Bonus Floor Area, so long as Buyer is not in default under this Agreement.

9.3 **Attorneys' Fees.** In any court proceeding brought to enforce or interpret this Agreement, the substantially prevailing party (as determined by the court) shall recover from the other party its costs and reasonable attorneys' fees, including costs and fees on appeal.

10. **Notices.** Wherever in this Agreement notice is required to be given, such notice shall be in writing, addressed to the person entitled to such notice, and shall be sent by either (i) personal service or (ii) recognized overnight express service which customarily maintains a contemporaneous permanent delivery record, to the address of such person as set forth in this Agreement, or such address or addresses designated in writing from time to time. The notice shall be deemed delivered on the earlier of (i) the date of actual delivery by personal service or (ii) the delivery date as shown in the regular business records of the overnight courier service, as the case may be. A copy of each notice shall be sent to:

If to Seller: Ira McDaniel  
Finance and Asset Management  
City of Bellevue  
450 110<sup>th</sup> Avenue NE  
Bellevue, WA 98004

With a Copy to: Monica Buck  
Assistant City Attorney  
City of Bellevue  
450 110<sup>th</sup> Avenue NE  
Bellevue, WA 98004

If to Buyer: Julius Helvey  
Vice President of Finance  
Bellevue Downtown Development, LLC  
433 California St., 7<sup>th</sup> Floor  
San Francisco, CA 94114-2011

With a Copy to: Paul R. Mohun  
Sr. Vice President and General Counsel  
Bellevue Downtown Development, LLC  
433 California St., 7<sup>th</sup> Floor  
San Francisco, CA 94104-2011

11. **Law.** This Agreement shall be governed and interpreted in accordance with the laws of the State of Washington. In any action brought to enforce or interpret the provisions of this Agreement, venue shall be exclusively in King County Superior Court.

12. **No Impairment or Commitment of City's Regulatory Discretion.** Nothing in this Agreement shall be interpreted to limit the exercise by the City of its taxation or regulatory powers with respect to any code amendments or land use approvals in accordance with applicable law, nor shall this Agreement be interpreted as a determination as to the consistency of any land use approvals with applicable plans, codes and ordinances, an agreement or commitment to approve any land use approvals, or any commitment whatsoever by the City with respect to any future City discretionary decisions.

13. **Counterparts.** This Agreement may be executed in any number of identical counterparts, any or all of which may contain the signatures of fewer than all of the parties but all of which shall be taken together as a single instrument.

14. **Term.** This Agreement shall be in effect for five (5) years from the date of execution. Time is of the essence of all provisions of this Agreement.

15. **Miscellaneous.** This Agreement represents the entire agreement of the parties regarding the sale of the Bonus Floor Area and supersedes any prior communications, written or oral. This Agreement is the product of negotiation and shall not be construed against either party as the drafter hereof. No amendment, modification,



or waiver of any rights hereunder shall be binding unless in writing and signed by the party or parties potentially adversely affected hereby. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns, subject to Section 8.5 above.

**16. Survival.** The provisions of Sections 2 and 9 through 16 shall survive the Closing and the conveyance of title to the Bonus Floor Area to Buyer.

Executed and effective the date set forth above.

**SELLER:**

City of Bellevue


By: \_\_\_\_\_  
Toni Call, Director of Finance and Asset Management

Approved as to form:

\_\_\_\_\_  
Monica Buck, Assistant City Attorney

**BUYER:**

Bellevue Downtown Development LLC, a Delaware limited liability company

By:   
Mee Mee Kiong, Senior Vice President, Finance

## EXHIBIT A

### TRANSFER OF BONUS FLOOR AREA (Major Public Open Space)

**Reference numbers of related documents:** Not applicable.

**Grantor:** The City of Bellevue

**Grantee:** Bellevue Downtown Development LLC

**Abbreviated Legal Descriptions:**

Grantor Property: \_\_\_\_\_ sq. feet of Major Public Open Space (MPOS) floor area from Lots 1 and 2 of KCSP No. 81-17, recording no. 8112039005. Additional legal description is on Exhibit A.

Grantee Property: Lots A, B and C of City of Bellevue BLA No. 16-134674 LW, recording no. 20161013900006. Additional legal description is on Exhibit B.

**Assessor's Property Tax Account Number(s):** 322505-9017, 322505-9199, 322505-9197, 322505-9076 and 322505-9080

The Grantor, THE CITY OF BELLEVUE, a Washington municipal corporation (the "City"), has created certain transferable bonus floor area pursuant to Land Use Code (LUC) section 20.25A.070.F through the development of a "major public open space" on the property owned by the City legally described on Exhibit A attached hereto ("Bonus Floor Area"). Pursuant to that certain Option Agreement for Purchase and Sale of Bonus Floor Area between the City and Grantee dated \_\_\_\_\_, \_\_\_\_\_ (the "Option Agreement"), the City agreed to sell, and Grantee agreed to purchase, portions of the Bonus Floor Area for use on property owned by Grantee, which is legally described on Exhibit B attached hereto.

Therefore, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the City hereby transfers, assigns, bargains, sells and conveys to Bellevue Downtown Development LLC, a Delaware limited liability company, as Grantee, the following amount of Bonus Floor Area pursuant to Bellevue City Code Ch. 20.25A:

\_\_\_\_\_ square feet (\_\_\_\_\_ s.f.) square feet of Bonus Floor Area, out of those Bonus Floor Area generated from the Major Public Open Space improvements constructed by Grantor on the real property in the City of Bellevue legally described on Exhibit A attached hereto.

This conveyance is made in accordance with the terms of the Option Agreement, the terms of which are not merged into this transfer document and which survive the

delivery of this transfer document to Grantee to the extent provided in said Option Agreement. The City does by these presents expressly limit the covenants of this transfer document to those herein expressed, and excludes all covenants arising or to arise by statutory or other implication, and does hereby covenant that it will forever warrant and defend title to the Bonus Floor Area conveyed hereunder against all persons lawfully claiming or to claim the same Bonus Floor Area by, through or under the City and not otherwise.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR: THE CITY OF BELLEVUE

By: \_\_\_\_\_  
Toni Call, Director of Finance and Asset Management

Approved as to form:

\_\_\_\_\_  
Monica Buck, Assistant City Attorney

Approved as to form by Grantee:

Bellevue Downtown Development LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF WASHINGTON)

) ss.

COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that \_\_\_\_\_ signed this instrument, on oath stated that \_\_\_\_\_ was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ for The City of Bellevue, the Washington municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of such party for the uses and purposes therein mentioned.

WITNESS my hand and seal hereto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Print Name \_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

(seal or stamp)

## **EXHIBIT A**

### **Legal Description of Grantor Property**

Lots 1 and 2 of King County Short Plat No. 81-17, according to plat recorded December 3, 1981 under recording number 8112039005, King County, Washington, EXCEPT portions dedicated for street purposes by instruments recorded under King County Recording Numbers 9201131170, 9203261584, 19990831001806, 20020920002701 and 20040922001886.

(King County Assessor Parcel Numbers 322505-9017 and 322505-9199)

## **EXHIBIT B**

### **Legal Description of Grantee Property**

Lots A, B and C of City of Bellevue Boundary Line Adjustment No. 16-134674 LW, recorded October 13, 2016 as recording no. 20161013900006, in King County, Washington.

(King County Assessor Parcel Numbers 322505-9197, 322505-9076 and 322505-9080)