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Special Meeting of the Board of Commissioners

Date: Tuesday, March 5, 2024

Time: 4:00 p.m.

Location: Hybrid Meeting; EHA Administrative Office, 3107 Colby Ave or Zoom

<https://us02web.zoom.us/j/673982739?pwd=WDVWK2FFVXNZOVRwaVJkbkszNUcxdz09>

Meeting ID: 673-982-739; passcode 514202

Contact Jaysen Garcia at jayseng@evha.org or (425) 303-1197 at least one hour in advance of the meeting if you wish to attend in person, while the EHA office is open by appointment only.

Roll Call

Item for Individual Consideration

Resolution No. 1587 Authorizing Acquisition of Mariner Square Property and Related Predevelopment Activities

Adjournment

Everett Housing Authority does not discriminate on the basis of disability in the administration of, or access to, its programs or activities. Requests for assistance or accommodations can be arranged by contacting Chris Neblett at (425) 303-1186, or chrisn@evha.org.

TO: Board of Commissioners
FROM: Jason Morrow, Chief Real Estate Officer
SUBJECT: Approval of Mariner Square Due Diligence and Land Closing Resolutions
DATE: March 5, 2024

Note: this resolution was originally presented at the February 25, 2024, Board of Commissioners meeting, and was tabled for further consideration until the March 4, 2024, meeting. Commissioners then voted to reconsider on March 5, 2024.

Background

EHA's 10-Year Strategic Plan calls for the creation of 1,500 units of affordable housing over the next ten years, with a focus on housing for families with children and seniors.

On May 15, 2023, EHA and Sno-Isle Library entered into an MOU to jointly acquire neighboring parcels of land with the goal of developing affordable housing for children with families, a library, and a community center in the Mariner neighborhood of unincorporated South Everett. The Mariner neighborhood is expected to undergo significant redevelopment in the coming years in preparation for the arrival of Link Light Rail.

Resolution No. 1587 authorizes the Executive Director or their designee to execute a Possession and Use Agreement (PUA) to acquire a 1.2-acre site located at 12717 4th Avenue W, Everett, WA 98204 (*hereinafter "Mariner Square"*), which is zoned for urban growth for a mixed-use project. The site is within EHA's jurisdiction (as provided for in RCW 35.82.020 (6)).

Resolution No. 1587 further authorizes the Executive Director or their designee to 1) take actions to close on the property Mariner Square as contemplated in the PUA, and 2) to commence predevelopment activities that are necessary or desirable to enable EHA to develop the property with multifamily housing.

Acquisition

The resolution authorizes the Executive Director to execute property acquisition closing documents including, but not limited to Review Period Extensions, Buyer Notice to Proceed, Financial Payments & Transfers, Tax Documents, Legal Documents, and Regulatory Documents.

Primary negotiated business deal terms in the PUA are as follows:

- \$2,790,000 base price plus closing costs *will be in escrow to execute the land transfer and within the terms of the PUA. The PUA provides a legal framework to arrive at the final compensation amount.*
- There is a target Settlement Date of June 1, 2024, to arrive at final compensation amount. In the event a settlement is not met 30 days prior to the target Settlement Date mediation will commence).

Predevelopment Activities

Staff plan to commence predevelopment activities for development of multifamily housing on Mariner Square property immediately after closing. This resolution authorizes the Executive Director or their designee to take actions to begin those activities.

The Mariner Square acquisition is currently in the initial planning and due diligence phase. During the PUA review period there has been a broad preliminary due diligence effort to analyze the following elements: project cost & underwriting, potential architectural & engineering characteristics, legal review, land use and regulatory requirements, construction components & logistics, and operational inputs.

The authority provided in this resolution allows the agency to execute predevelopment activities for Mariner Square, including but not limited to: financial analysis; legal analysis and document preparation; the legal formation of entity(ies) required to limit liabilities and form project partnerships; prospective funding and capital markets finance pursuits; consultant and vendor engagement, including engagement of an architectural firm for full project design and administration services; design development; and regulatory compliance & entitlements coordination.

EHA plans to use agency resources to finance acquisition and predevelopment expenses.

Future process phases will include closing on construction and permanent financing and commencement of project construction and will be authorized separately under future resolutions later in the process.

The initial Pre-Development budget up to financial closing and excluding land acquisition is projected at a not-to-exceed amount of \$5,000,000.

Recommended Action

Adopt Resolution No. 1587, which authorizes the execution of documents that enable the acquisition of Mariner Square, including executing and closing on the acquisition, and further authorizes the Executive Director or his designee to commence predevelopment activities required to develop the property with multifamily housing.

Resolution No. 1587

AUTHORIZING ACQUISITION OF REAL PROPERTY AT 12717 4TH AVENUE WEST AND APPROVING OTHER ACTIONS TO EFFECTUATE THE ACQUISITION AND PREDEVELOPMENT ACTIVITIES

WHEREAS, Everett Housing Authority's (EHA) 10-Year Strategic Plan calls for the creation of 1,500 units of affordable housing over the next ten years; and

WHEREAS, in May 2023, EHA entered into a Memorandum of Understanding with the Sno-Isle Library to jointly acquire land in the Mariner neighborhood of South Everett to develop a mixed-use project consisting of affordable housing, a library, and community space; and

WHEREAS, EHA has identified the property located at 12717 4th Avenue West, Everett, WA 98204 (the "Property") for acquisition associated with this project; and

WHEREAS, EHA is negotiating a Possession and Use Agreement with the owner of the Property to finalize the terms of the sale;

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE CITY OF EVERETT:

Section 1: Execution by the Executive Director or their designee of the Possession and Use Agreement for the property located at 12717 4th Avenue West, Everett, WA 98204 (draft attached hereto as Exhibit A), and other actions already taken by EHA in furtherance of the acquisition, is hereby authorized or ratified.

Section 2: The Executive Director or their designee is authorized to take any and all additional actions that are necessary or desirable to effectuate the terms of the Possession and Use Agreement and close on the property.

Section 3: Upon closing, the Executive Director or their designee is authorized to operate and manage the Property, either directly or by contracting for management, until such time as EHA is able to redevelop the property.

Section 4: The Executive Director or their designee is authorized to execute predevelopment activities associated with development of the Property, up to a not-to-exceed limit of \$5,000,000.

Section 5: This Resolution shall take effect immediately.

Adopted by the Board of Commissioners of the Housing Authority of the City of Everett, Washington, this 5th day of March, 2024.

Attest:

Chair, Board of Commissioners

Secretary

After recording return document to:

**Kinnon Williams
1111 Third Avenue
Suite 3000
Seattle, WA 98101**

POSSESSION AND USE AGREEMENT

(Mariner Community Campus)

Document Title: Possession and Use Agreement

Grantor(s): MS CENTER, LLC, a Washington limited liability company

Grantee(s): HOUSING AUTHORITY OF THE CITY OF EVERETT, a public body corporate and politic of the state of Washington

Abbreviated Legal Description: SEC 25 TWP 28 RGE 04 LOT 3 (MARINER SQUARE) BSP ZA8105123 SURVEY REC VOL 32 OF SURVS PGS 218-220 AF NO 9008175008 BEING A PTN OF NW1/4 SE1/4

Legal Description: Exhibit A to this Document.

Assessor's Tax Parcel Number: 28042500406500

POSSESSION AND USE AGREEMENT

(Mariner Community Campus)

This POSSESSION AND USE AGREEMENT (this “**Agreement**”) is made and entered into by and between Grantee, the **HOUSING AUTHORITY OF THE CITY OF EVERETT**, a public body corporate and politic of the state of Washington, hereinafter referred to as the "Agency", and the undersigned Grantor, **MS CENTER, LLC**, a Washington limited liability company hereinafter referred to as the "Owner":

WITNESSETH

WHEREAS, the Agency affirms that the Owner's real estate described in Exhibit A hereto (the “**Property**”) is required by the Agency for immediate construction of a public housing project.

AND WHEREAS, the Agency affirms that any delay in its project is contrary to the public interest;

AND WHEREAS, the Agency has made a firm and continuing offer to pay the amount of: **Two Million Seven Hundred Ninety Thousand and 00/100 Dollars (\$2,790,000.00)** (the “**Offer**”) for the purchase of the following described Property situated in Snohomish County, in the State of Washington:

For legal description
see Exhibit A attached hereto and made a part hereof

AND WHEREAS, the Owner disputes that the Offer constitutes just compensation for the Property;

NOW THEREFORE, for and in consideration of the payment of said offer, the Owner hereby grants to the Agency a right to possess and use the above-described Property and the parties further agree that:

1. The Property is necessary for a public use of the Agency, and is contingent upon the Agency obtaining resolution approval from its Board of Directors at the next scheduled Board Meeting on February 26, 2024 (the “**Board Meeting**”). The parties hereto acknowledge and agree that: (i) this document is authorized for signature on behalf of the Agency by the Board Chair (in lieu of the Executive

Director of the Agency)), subject to such resolution approval at the Board Meeting pursuant to the previous sentence, (ii) that the deadline for final information packet delivery in advance of the Board Meeting is February 16, 2024, and (iii) that the Agency will need to submit all information relating to this Agreement on or before such deadline.

2. The Agency will issue payment of the Offer to the Owner, subject only to deduction of the value of interests of others therein and only following the Agency's review and approval of those certain due diligence materials provided in writing by the Owner to the Agency and summarized in Exhibit B attached hereto and incorporated herein (collectively, the "**Due Diligence Materials**"). For the avoidance of doubt, the Agency shall have a period of thirty (30) calendar days following the Agency's receipt of the Due Diligence Materials (the "**Due Diligence Review Period**") to review and evaluate whether or not to proceed to close on the transactions contemplated under this Agreement. In the event that the Agency elects not to proceed to close on the transactions contemplated under this Agreement on or before expiration of the Due Diligence Review Period, then the Agency may, upon the Agency's written request to the Escrow Agent, obtain a refund of the Earnest Money Deposit, at which time, this Agreement shall otherwise become of no further force or effect except those provisions which explicitly survive termination. For the avoidance of doubt, if the Agency does not affirmatively state in writing to the Owner that the Agency elects to proceed to close on the transactions contemplated under this Agreement on or before expiration of the Due Diligence Review Period, then the Agency will be deemed to have requested a refund of the Earnest Money Deposit and this Agreement shall otherwise become of no further force or effect pursuant to the previous sentence.
3. Execution of this Agreement by the undersigned parties shall not prejudice such parties' rights to subsequent adjudication of just compensation due and owing to Owner pursuant to state law, and neither shall this Agreement, nor the basis therefore, be construed as an admission of fair market value or just compensation by any of the parties named herein. The parties stipulate and agree that this Agreement shall not be admissible in any condemnation action between the parties related to the Property.
4. The date of valuation for the determination of just compensation shall be the date of the date of Earnest Money Deposit set forth in paragraph 5 below.
5. The Owners hereby waives the requirement of a written notice to move, as

provided by RCW 8.26.180, and will surrender possession of the above-described Property to the Agency not later than February 28, 2024. Provided, however, that the Agency shall first be required to place the \$ _____.00 continuing Offer into escrow at Ticor Title in Everett, Washington on or before February 28, 2023 (the “**Earnest Money Deposit**”). Owner agrees to provide an IRS W-9 form to escrow prior to distribution of the funds and no distribution of the Earnest Money Deposit shall be made prior to final agreement of the parties, or final adjudication by the Courts, on just compensation due and owing to the Owner for the Property.

6. The Agency shall provide Owners at least fifteen (15) days’ advance written notice prior to conducting any assessments or inspections on the Property and allow the Owner and its agents to attend and observe any such assessments or inspections.
7. If the parties are unable to reach agreement of the just compensation due to the Owners for the Property by June 1, 2024, they will engage in mediation in a good faith effort to reach a settlement at a mutually agreeable date to be determined by the parties. The Agency shall pay one half of the mediator’s cost and the Owner shall pay the other half. To facilitate mediation, the parties shall exchange appraisals no later than 30 days prior to the schedule mediation date, with the date of valuation established under paragraph section 4 above.
8. If the parties are unable to reach an agreement on just compensation prior to or at mediation the Agency shall promptly institute condemnation proceedings.
9. In the event an action is filed, the Owner shall:
 - A. Authorize its designated legal representative, John Paul Turner, to accept service on Owners behalf;
 - B. Stipulate to entry of an Order Adjudicating Public Use and Necessity; and
 - C. Stipulate to entry of an Order Granting Immediate Possession and Use as provided by RCW 8.25.070, which, by this reference, is incorporated herein as if fully set forth.
10. The terms and obligations hereof shall not become binding upon the Agency unless and until accepted and approved hereon in writing by the authorized agent of the Agency.

Dated: This _____ day of _____ 2024.

Member/Manager

Accepted and Approved

Dated: This _____ day of _____ 2024

**HOUSING AUTHORITY OF THE CITY
OF EVERETT**

XXXXXXX, Director

Attest:

By: XXXXXXXXXX

Approved as to form:

**ATTORNEY FOR
HOUSING AUTHORITY OF THE CITY OF EVERETT**

STATE OF WASHINGTON

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ss.

COUNTY OF WHATCOM

)

I certify that I know or have satisfactory evidence that Robert Filippini is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Member/Manager of James Street Partners LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: this _____ day of February, 2023.

Robert Filippini

(Seal or stamp)

Printed Name: _____
Notary Public
My appointment expires: _____

STATE OF WASHINGTON

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ss.

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COUNTY OF WHATCOM

I certify that I know or have satisfactory evidence that Seth Fleetwood is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of City of Bellingham to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: this _____ day of February, 2023.

Seth Fleetwood

(Seal or stamp)

Printed Name: _____
Notary Public
My appointment expires: _____

EXHIBIT A

LEGAL DESCRIPTION

The Property Legal Description

[To be confirmed by Title Company]

LOT 3 OF BINDING SITE PLAN RECORDED IN VOLUME 32 OF SURVEYS, PAGES 218 THROUGH 220, INCLUSIVE, UNDER RECORDING NUMBER 9008175008, BEING A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 28 NORTH, RANGE 4 EAST, W.M. IN SNOHOMISH COUNTY WASHINGTON.

AND more commonly known as 12717 4th Avenue W. Everett, Washington 98204

EXHIBIT B

Due Diligence Materials

The Agency acknowledges information listed below will only be made available to if in the Owner's possession and control:

Building	All plans and specifications for the Property Floor plans Property brochures
Construction Documents	As-built drawings and/or construction drawings All engineering or related construction reports, with all warranties and guarantees for work performed
Capital Improvements	History of capital improvements for the previous two (2) years
Certificates of Occupancy	Certificates of Occupancy for all structures, including elevators
Delinquency Reports	A delinquency report showing balances at 0-30 days, 31-60 days, 61-90 days, and 90+ days
Environmental	Owner's Phase I report
File Audits	Property level financial statements for prior two (2) years
General Ledger	General ledger detail for income statement accounts for the prior two (2) years ending December 31 Year-to-date general ledger statement
Insurance	Copies of all current Owner and tenant insurance certificates
Lease Administration	Current rent roll Schedule of rental rates Schedule of expiration dates Security deposit report Concession report Delinquency report
Offers	Redacted copies of all bona fide written offers for the purchase of the Property received by Owner or Owner's agent

On-sight Review	The following items should be provided in advance of an on-site review: Work Order Log – for previous year and throughout due diligence Maintenance Log, including all outstanding work orders with explanations and updates or resolutions throughout due diligence
Management	Management or Sub-Management Agreement Management records
Leases	Owner's standard form lease and addenda Owner's form rental application Copies of all tenant leases, applications, and a current tenant rent roll, including a list of any rent subsidies provided List of commissions and leasing costs to be discharge
Litigation	All current and prior litigation documents and written correspondence relating to any pending or threatened litigation matters
Miscellaneous	List of specialty license agreements Office and maintenance inventory Owner shall make available to Buyer any other documents or instruments in its possession reasonably requested in connection with ownership and operation of the Property (excluding proprietary documents)
Operating Statement	Current year-to-date and prior two (2) full years 12-month income statement ending December 31
Operation & Maintenance	Operation and Maintenance Plans, if any
Permits	Copies of any licenses or permits related to the Property
Personal Property	Inventory of fixtures and tangible personal property, including and noting any fixtures or tangible personal property that Seller desires to retain at closing, if any
Personnel	Personnel list, including job descriptions
Easements & Encumbrances	Copies of any easements and encumbrances on the Property
Service Contracts & Equipment leases	Copies of all service/vendor agreements, contracts or leases that encumber the Property, including all amendments, commencement letters and options letters List of vendors Copies of all equipment leases Any property locator or similar agreements (other than agreements with the property manager), if any, pertaining to the marketing and advertisement of

	the Property for leasing (and payment of commissions in connection therewith)
Site Plan / Surveys	Existing Alta Survey Existing Site Plan
Tax	Tax bills for the current year and paid receipts for the previous two (2) years The statue of any pending tax appeal, if applicable
Tenant Ledger	Full resident ledger detail for income statement accounts
Title Commitment	Existing title policy and commitment Current status title report Title underlying documents
Utility Bills and Logs	Utility bills for the past two (2) years Utility log, including utility company, account number, phone number, meter number, and site plan with meter locations
Warranties	Assignable warranties Warranties for roof, HVAC units, construction, and appliances Closeout manual
Zoning	Any code violations within the last 24 months and all related documents Existing zoning letter
Website	List of all domains, active or parked associated with Property