

RESOLUTION NO. 993

A RESOLUTION OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, APPROVING AN EXCLUSIVE BROKERAGE AGREEMENT WITH JEFF KRAFT OF KIDDER MATHEWS, FOR A TERM THROUGH DECEMBER 2024

WHEREAS, in spring of 2010 the City executed an Exclusive Sale Listing Agreement and an Exclusive Lease Listing Agreement with Jeff Kraft as broker to sell and lease the City property within the University Place Town Center Overlay Zone; and

WHEREAS, Jeff Kraft's work resulted in the current active development within the City-owned portions of Town Center; and

WHEREAS, the City's agreement with Kidder Mathews for Jeff Kraft's work expires on December 31, 2022; and

WHEREAS, there are still Lots in City title described in the University Place Town Center Site Plan contemplated by the City for sale, and the north retail space within the University Place Civic Building and the Pierce County Library Expansion Space are still contemplated by the City for lease; and

WHEREAS, in addition, the City has certain property which has been or may be declared surplus to the City's needs, and the proposed Exclusive Brokerage Agreement would allow Kidder Mathews to market any City property formally designated by resolution of the City Council as surplus to the City's needs; and

WHEREAS, based on the capabilities of Kidder Mathews and the past performance of Jeff Kraft, staff recommends entering into an Exclusive Brokerage Agreement with Jeff Kraft of Kidder Mathews through the end of 2024;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AS FOLLOWS:

Section 1. Incorporation of Recitals. The recitals are hereby incorporated herein as if set forth in full.

Section 2. Approval of Form of Documents. The City Council hereby approves execution of the Exclusive Brokerage Agreement in substantially the form of the document accompanying this Resolution.

Section 3. Completion of Transaction. The City Manager is authorized to take and execute any additional measures or documents that may be necessary to complete this transaction, which are consistent with the approved form of documents attached to this Resolution, and this Resolution.

Section 4. Effective Date. This Resolution shall be effective immediately upon adoption by the City Council.

ADOPTED BY THE CITY COUNCIL ON NOVEMBER 7, 2022.

Steve Worthington, Mayor

ATTEST:

Emelita J. Genetia, City Clerk

APPROVED AS TO FORM:

Matthew S. Kaser, City Attorney

UNOFFICIAL DOCUMENT

Kidder Mathews
1201 Pacific Avenue, Suite 1400
Tacoma, Washington 98402
T / 253.722.1405
F / 253.722.1409

EXCLUSIVE BROKERAGE AGREEMENT

In consideration of the services to be performed by the undersigned Broker, the undersigned Owner grants to Broker commencing with the date of this Agreement and expiring at midnight on December 31, 2024 the exclusive and irrevocable right to sell, or lease, as determined by Owner, certain real estate (the "property") situate in the City of University Place, Pierce County, Washington, more specifically described in the First Amended Exhibit A attached hereto.

1. DEFINITIONS. The term "sell" (and similar phrases) as used in this Agreement shall mean and include sell, contract to sell, exchange, lease for over 5 years, and/or an option to purchase. The phrase "this Agreement" and "during the term hereof" include written extensions of this Agreement.

2. AGENCY / DUAL AGENCY. Owner authorizes Broker to appoint Jeff Kraft to act as Owner's Listing Agent(s). It is understood and agreed that this Agreement creates an agency relationship with Listing Agent(s) and Broker only, not with any other salesperson of Broker; provided, Owner authorizes Broker to appoint other salespersons affiliated with Broker as subagents to act on Owner's behalf as and when needed, at Broker's discretion. Any other broker or salesperson, other than Broker or Listing Agent(s), will not be representing Owner and may represent the buyer. Accordingly, for purposes of this Agreement, "Broker" means Listing Agent(s), including any subagents, and Listing Agent's Broker, Designated Broker or Branch Manager, unless expressly stated otherwise. Owner further authorizes Broker to enter into cooperative brokerage agreements. Owner agrees that if the property is sold to a buyer represented by one of Broker's salespersons other than Listing Agent(s), then Owner consents to Broker acting as a dual agent. Owner further agrees that if the property is sold to a buyer who Listing Agent also represents, then Owner consents to Listing Agent(s) and Broker acting as dual agents. Owner agrees that different salespersons affiliated with Broker may represent different sellers in competing transactions involving the same buyer and that this shall not be considered action by Broker that is adverse or detrimental to the interests of either seller, nor shall it be considered a conflict of interest on the part of Broker. Owner acknowledges receipt of the pamphlet entitled "The Law of Real Estate Agency." If Broker acts as a dual agent, then Broker shall be entitled to the entire commission payable under this Agreement plus any additional compensation Broker may have negotiated with the buyer.

3. PROPERTY INFORMATION. Owner acknowledges receipt of a copy of this Agreement, with the property information in this Agreement fully filled in. Owner warrants that the property information is correct. Owner understands that Broker and other members of the Multiple Listing Service will make representations to prospective buyers based solely on the property information in this Agreement, and agrees to indemnify and hold harmless Broker and other members of the Multiple Listing Service in the event the foregoing warranties are incorrect.

Owner confirms that following closing, the amount of the purchase price and any other terms of the sale of the property shall not be deemed confidential information and Owner authorizes disclosure of the same.

4. TITLE AND CLOSING COSTS. Owner warrants that Owner has the right to sell the property on the terms herein, and agrees to furnish and pay for a purchaser's policy of title insurance showing marketable title to the property. Owner agrees to pay real estate excise tax, deed revenue stamps and one-half of any escrow fees. Rents, insurance, taxes, interest and reserves on assumed encumbrances are to be prorated between Owner and buyer as of the date of closing.

5. COMMISSION. Broker shall be entitled to a commission if: (a) Broker procures a buyer on the terms of this Agreement, or on other terms acceptable to Owner; (b) Owner sells the property directly or indirectly or through any person or entity other than Broker during the term of this Agreement; (c) Owner sells the property within six months after the expiration or sooner termination of this Agreement to a person or entity that submitted an offer to purchase the property during the term of this Agreement or that appears on any registration list provided by Broker pursuant to this Agreement, or to an "Affiliate" of such a person or entity that submitted an offer or that appears on the registration list; (d) the property is made unmarketable by Owner's voluntary act; or (e) Owner withdraws the property from sale, or otherwise prevents Broker from selling it. The commission shall be calculated as follows: 5% on the gross sales. In the event a portion of the gross sales price is dedicated in the sale agreement to any mandatory City fees, including but not limited to development impact fees or permit fees, the amount of those mandatory fees to be paid from the gross sales price shall not be included when calculating the Broker's commission percentage. Broker must submit any registration list to Owner within 15 days after the expiration or sooner termination of this Agreement and shall only include on the registration list persons or entities to whose attention the property was brought through the signs, advertising or other action of Broker, or who received information secured directly or indirectly from or through Broker during the term of this Agreement. The Owner shall provide the registration list to any other brokers who assist the Owner with this property. "Affiliate" means, with respect to any person or entity that submitted an offer during the term of this Agreement or that appears on the registration list, a person or entity which has more than a 10% ownership or voting interest in such an entity or any entity in which more than 10% of the ownership or voting interests are owned or controlled by such a person or entity. In the event a commission becomes due under (d) or (e) above, Broker shall propose a commission to Owner based on sales in the current market. If Owner and Broker cannot agree to a commission, the matter shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules.

6. BROKER/MULTIPLE LISTING. Broker shall cause this listing to be published by Commercial Brokers Association ("CBA") for distribution to all CBA members through CBA's listing systems. Broker shall cooperate with all other members of CBA in working toward the sale of the property. Owner understands and agrees that all property information contained in this Agreement or otherwise given to CBA becomes the property of CBA, is not confidential, and will be given to third parties, including prospective buyers, other cooperating members of CBA who do not represent the Owner and, in some instances, may represent the buyer and other parties granted access to CBA's listing systems. Owner agrees that Broker may record this Agreement. Regardless of whether a cooperating member is the Broker of the buyer, the Owner, neither or both, the member shall be entitled to receive the selling office's share of the commission as designated by the listing office. IT IS UNDERSTOOD THAT COMMERCIAL BROKERS ASSOCIATION IS NOT A PARTY TO THIS AGREEMENT, AND ITS SOLE FUNCTION IS TO FURNISH THE DESCRIPTIVE INFORMATION SET FORTH IN THIS LISTING TO ITS MEMBERS, WITHOUT VERIFICATION AND WITHOUT ASSUMING ANY RESPONSIBILITY FOR SUCH INFORMATION OR IN RESPECT TO THIS AGREEMENT.

Dated this _____ day of November, 2022.

OWNER:

CITY OF UNIVERSITY PLACE

By: _____
Stephen P. Sugg, City Manager

3609 Market Place W., Ste. 201
University Place, WA 98466
Phone: 253.566.5656
Fax: 253.566.5658

In consideration of Owner's execution of this Agreement, the undersigned hereby agrees to act as Owner's agent to sell the property.

KIDDER MATHEWS

By: _____
Authorized Representative

FIRST AMENDED EXHIBIT A

CITY PROPERTY SUBJECT TO THIS AGREEMENT

1. WITHIN THE TOWN CENTER OVERLAY ZONE

A. All Lots still in City title described in the University Place Town Center Site Plan (Contemplated by the Owner for sale).

B. North retail space within the University Place Civic Building (Contemplated by the Owner for Lease).

C. That portion of the second floor of the University Place Civic Building used by the Pierce County Sheriff's Office for law enforcement purposes.

2. OUTSIDE THE TOWN CENTER OVERLAY ZONE

All Owner's property formally designated as surplus to the City's needs by resolution of the City Council.