



SEATTLE CITY COUNCIL

Public Assets and Native Communities Committee

Agenda

Tuesday, August 3, 2021

2:00 PM

Remote Meeting. Call 253-215-8782; Meeting ID: 586 416 9164; or
Seattle Channel online.

Debora Juarez, Chair
Alex Pedersen, Vice-Chair
Lisa Herbold, Member
Teresa Mosqueda, Member
Kshama Sawant, Member
Dan Strauss, Alternate

Chair Info: 206-684-8805; Debora.Juarez@seattle.gov

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<http://seattle.gov/cityclerk/accommodations>.



SEATTLE CITY COUNCIL
Public Assets and Native Communities
Committee
Agenda
August 3, 2021 - 2:00 PM

Meeting Location:

Remote Meeting. Call 253-215-8782; Meeting ID: 586 416 9164; or Seattle Channel online.

Committee Website:

<http://www.seattle.gov/council/committees/public-assets-and-native-communities>

This meeting also constitutes a meeting of the City Council, provided that the meeting shall be conducted as a committee meeting under the Council Rules and Procedures, and Council action shall be limited to committee business.

In-person attendance is currently prohibited per Washington State Governor's Proclamation 20-28.15, until the COVID-19 State of Emergency is terminated or Proclamation 20-28 is rescinded by the Governor or State legislature. Meeting participation is limited to access by telephone conference line and online by the Seattle Channel.

Register online to speak during the Public Comment period at the 2:00 p.m. Public Assets and Native Communities Committee meeting at <http://www.seattle.gov/council/committees/public-comment>.

Online registration to speak at the Public Assets and Native Communities Committee meeting will begin two hours before the 2:00 p.m. meeting start time, and registration will end at the conclusion of the Public Comment period during the meeting. Speakers must be registered in order to be recognized by the Chair.

Submit written comments to Councilmember Juarez at Debra.Juarez@seattle.gov

Sign-up to provide Public Comment at the meeting at <http://www.seattle.gov/council/committees/public-comment>

Watch live streaming video of the meeting at <http://www.seattle.gov/council/watch-council-live>

Listen to the meeting by calling the Council Chamber Listen Line at 253-215-8782 Meeting ID: 586 416 9164

One Tap Mobile No. US: +12532158782,,5864169164#

Please Note: Times listed are estimated

A. Call To Order

B. Approval of the Agenda

C. Chair's Report

D. Public Comment

E. Items of Business

1. Climate Pledge Arena Construction Update

Supporting
Documents: [Presentation](#)

Presentation (30 minutes)

Presenter: Tod Leiweke, CEO of Seattle Kraken

2. [CB 120139](#) **AN ORDINANCE granting Seattle Arena Company, LLC a permit to construct, maintain, and operate a tunnel under and across Thomas Street, east of 1st Avenue North and west of Warren Avenue North, and install permanently tensioned tie-backs in portions of Thomas Street, east of 1st Avenue North and west of 2nd Avenue North, for the life of the Climate Pledge Arena building lease; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.**

*Supporting
Documents:*

[Summary and Fiscal Note](#)

[Summary and Fiscal Note Att A](#)

[Central Staff Memo](#)

[Presentation](#)

Briefing, Discussion, and Possible Vote (15 minutes)

Presenters: Amy Gray and Beverly Barnett, Seattle Department of Transportation; Lish Whitson, Council Central Staff

3. [CB 120141](#) **AN ORDINANCE relating to Seattle Parks and Recreation; authorizing the acquisition of real property commonly known as 1024 South Elmgrove Street; authorizing acceptance of a recording of the deed for open space, park, and recreation purposes; and ratifying and confirming certain prior acts.**

Attachments: [Att 1 – Purchase and Sale Agreement](#)
[Att 2 – First Amendment to Purchase and Sale Agreement](#)
[Att 3 - Deed Acceptance Certificate](#)

Supporting Documents: [Summary and Fiscal Note](#)
[Summary Ex A - Duwamish Waterway Park Addition](#)
[Summary Ex B - Fifth Amendment to PSA](#)
[Presentation](#)

Briefing, Discussion, and Possible Vote (15 minutes)

Presenters: Jesús Aguirre, Superintendent, and Lise Ward, Seattle Parks and Recreation; Traci Ratzliff, Council Central Staff

4. [CB 120140](#) **AN ORDINANCE relating to Seattle Parks and Recreation (SPR); authorizing the acquisition of real property commonly known as 3638 34th Avenue South; authorizing acceptance of a recording of the deed for open space, park, and recreation purposes; and ratifying and confirming certain prior acts.**

Attachments: [Att 1 – Purchase and Sale Agreement](#)
[Att 2 - Deed Acceptance Certificate](#)

Supporting Documents: [Summary and Fiscal Note](#)
[Summary Ex A - Site Map](#)
[Presentation](#)

Briefing, Discussion, and Possible Vote (15 minutes)

Presenters: Jesús Aguirre, Superintendent, and Lise Ward, Seattle Parks and Recreation; Traci Ratzliff, Council Central Staff

F. Adjournment



Legislation Text

File #: Inf 1856, **Version:** 1

Climate Pledge Arena Construction Update

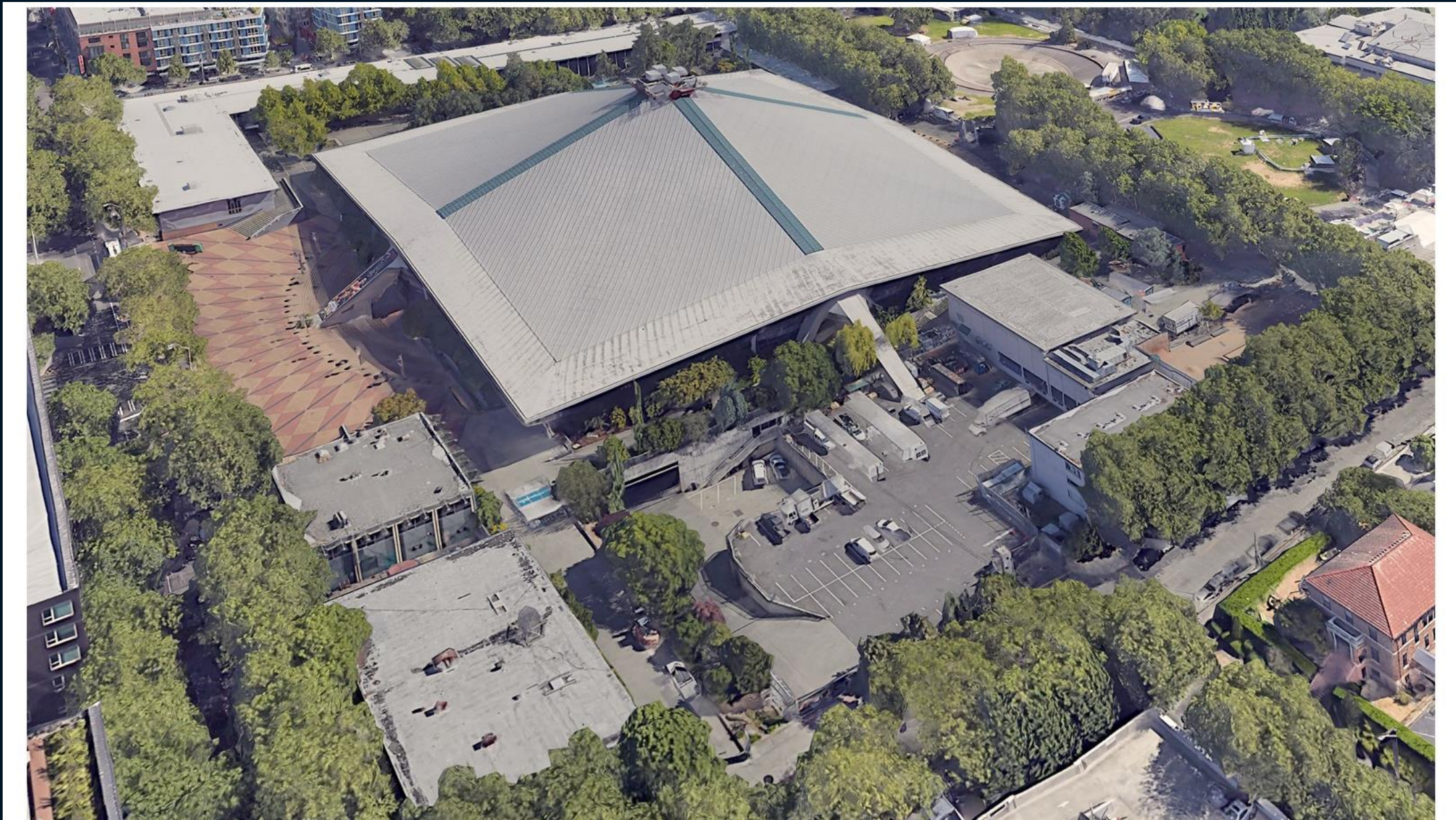


**CLIMATE
PLEDGE
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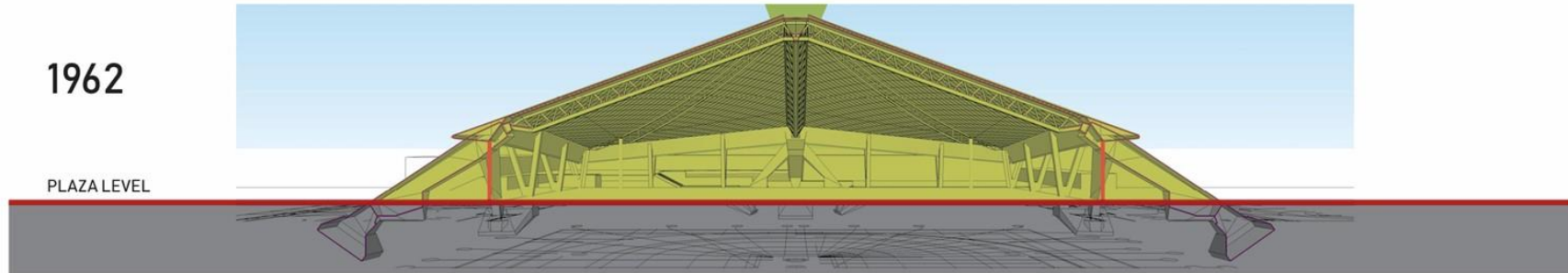
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Climate Pledge Arena Construction Update

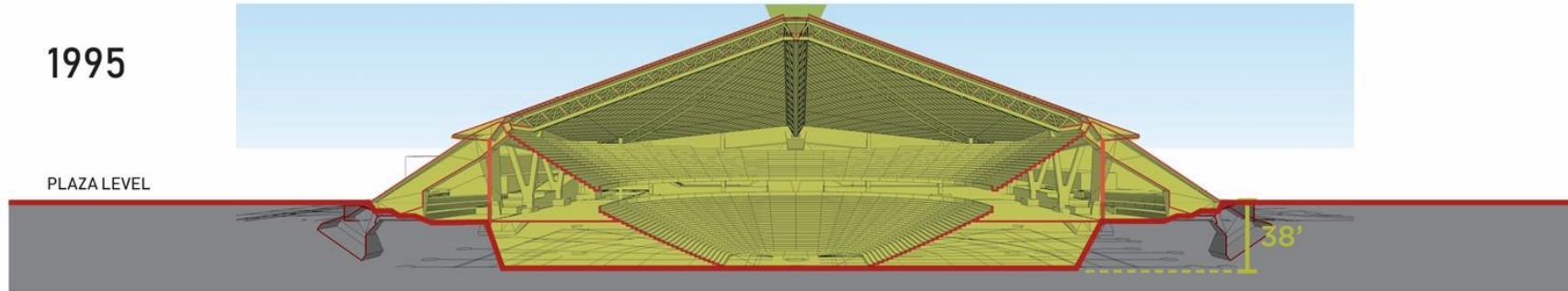
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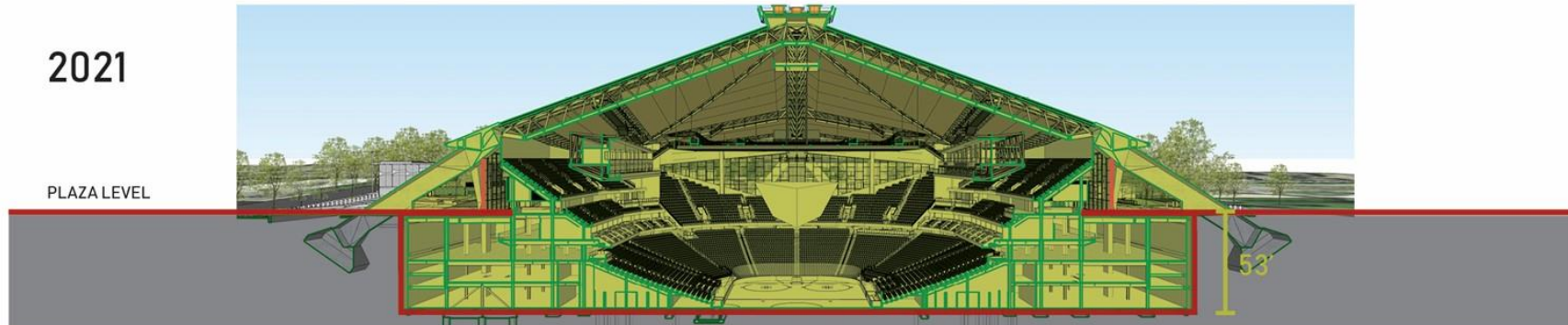
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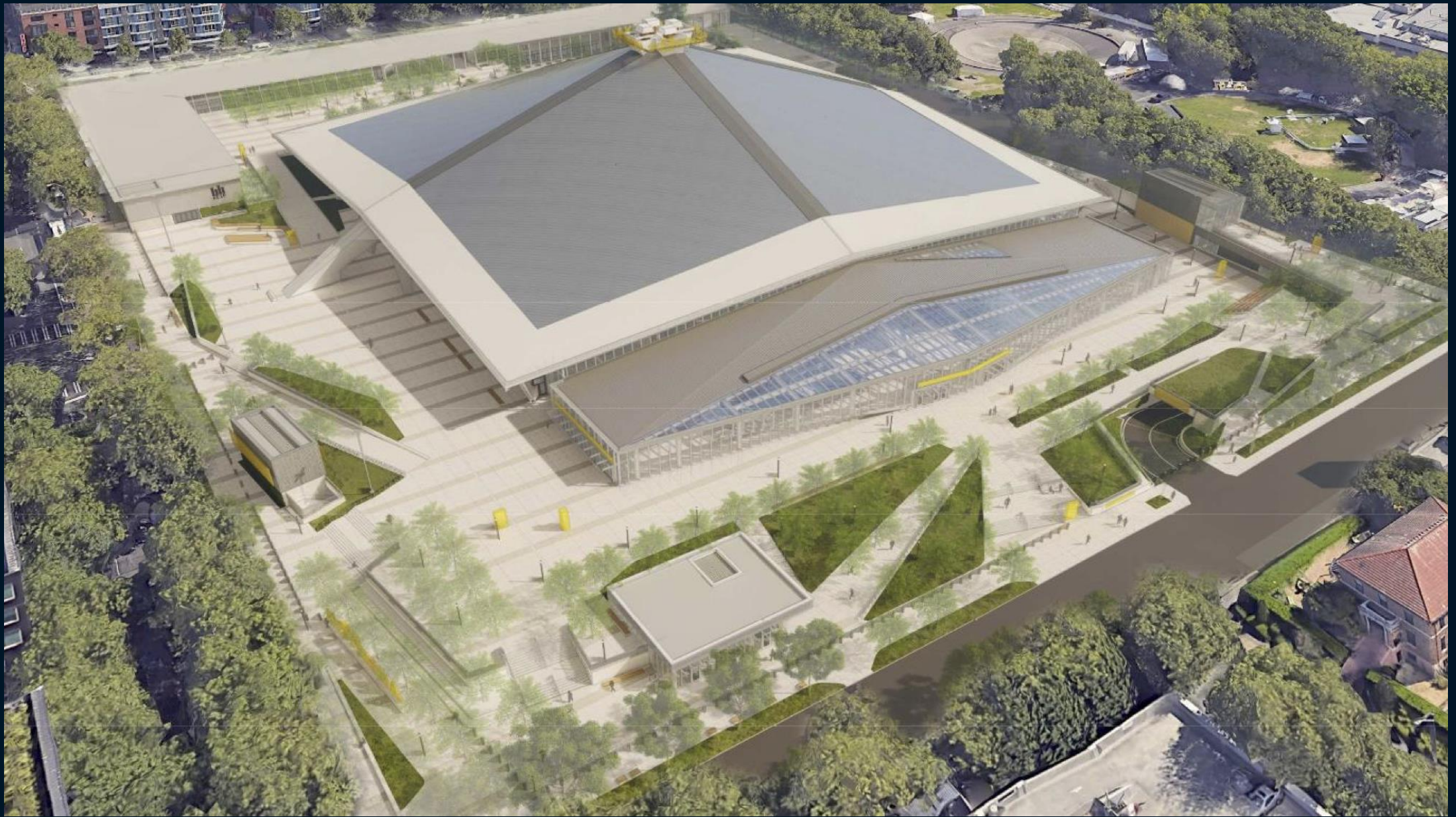
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The Science of Sports & Entertainment Speaker Series



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SEATTLE
KRAKEN



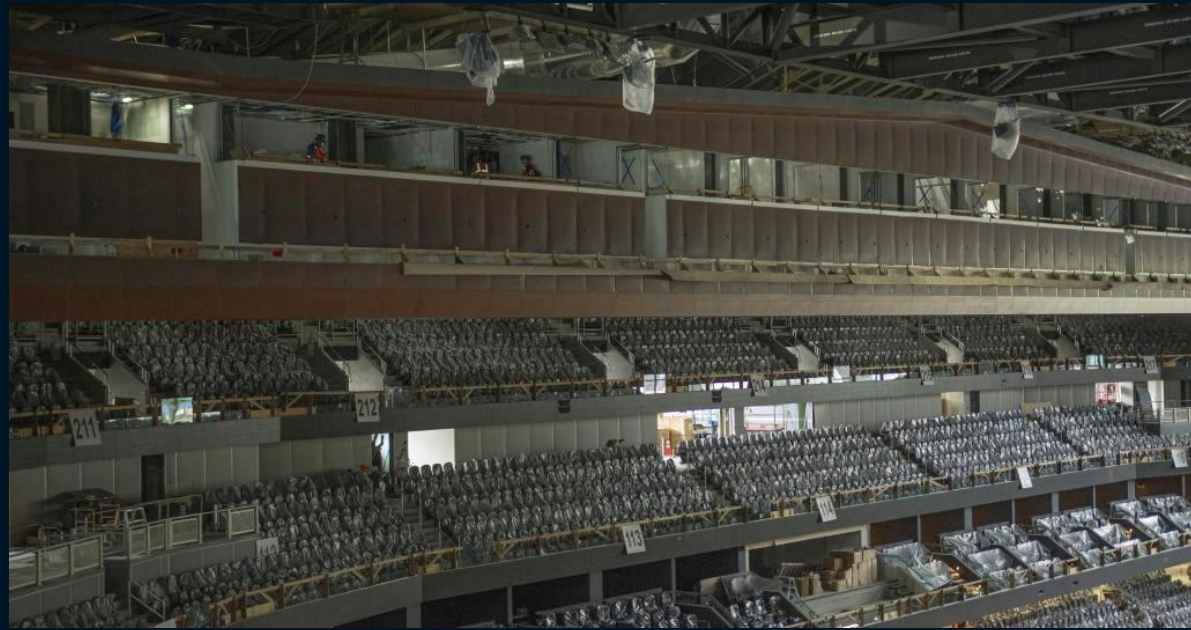
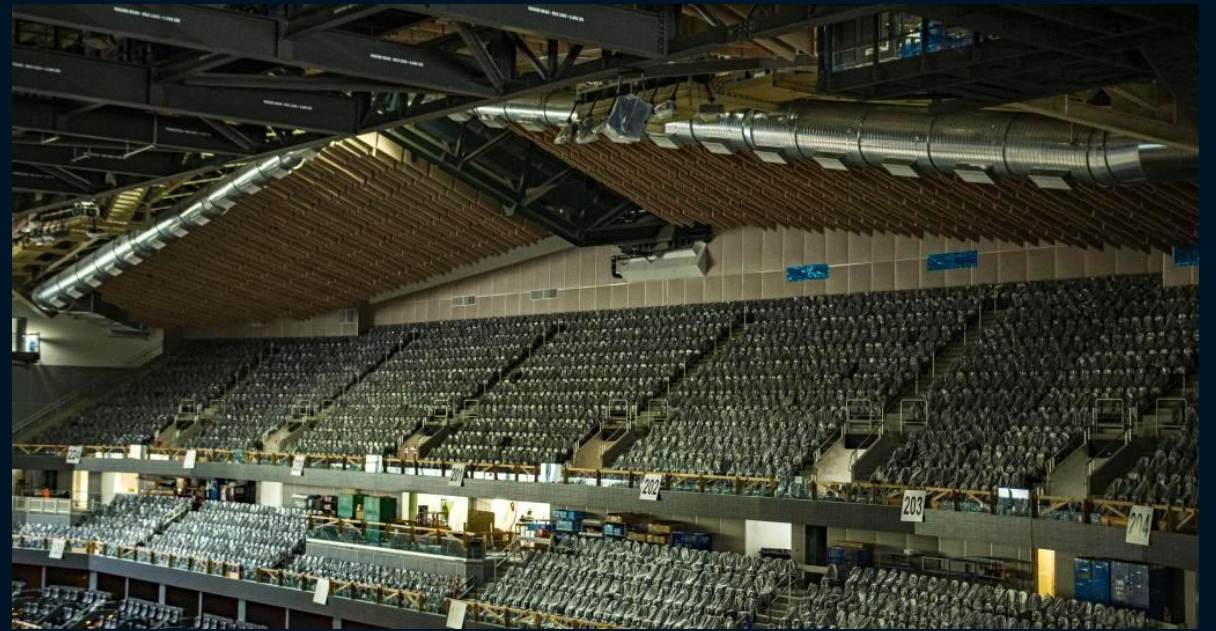


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TRANSPORTATION INFRASTRUCTURE







**KRAKEN
COMMUNITY
ICEPLEX**

Kraken Community Iceplex



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KRAKEN COMMUNITY ICEPLEX

169,000 square feet

750,000+ guests / year

20,000 hours of programming

Best Sports Bar in Seattle

Home of hockey in Seattle

Home of the Seattle Kraken







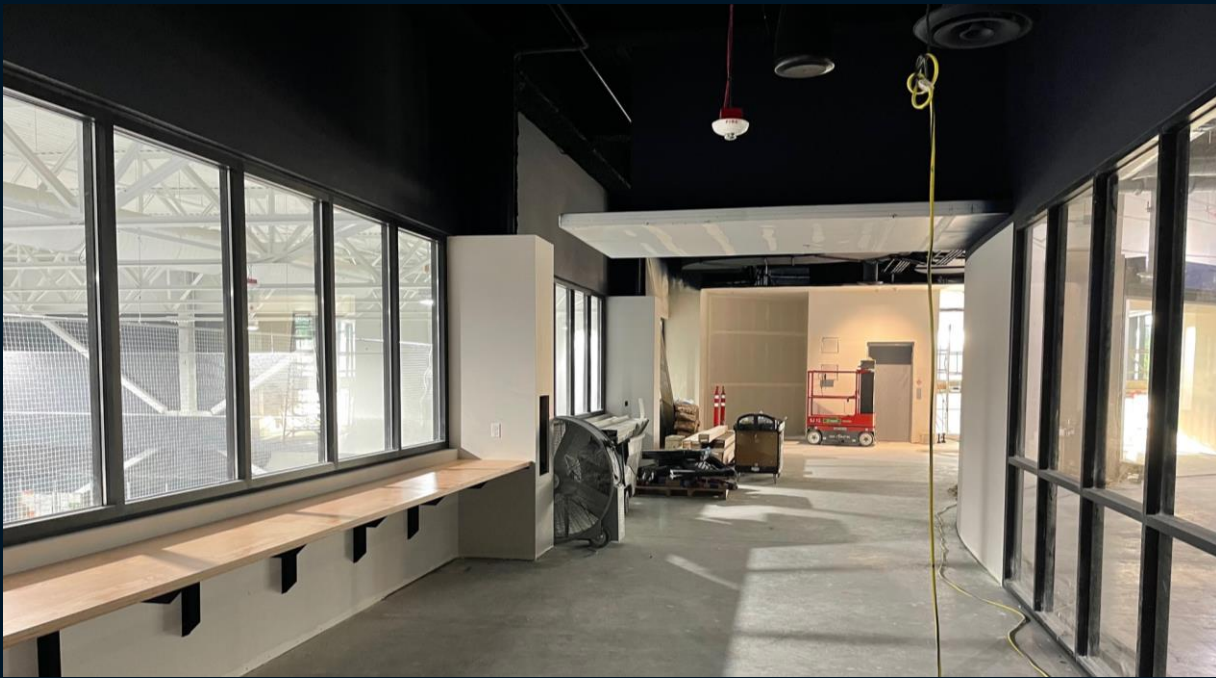
02 | MAIN DINING + BAR



FRONT LOBBY







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A man with grey hair, wearing a dark blue polo shirt with a white logo on the chest, is speaking at a podium. The background is a dark blue wall with repeating logos for 'CLIMATE PLEDGE ARENA' and 'SYMETRA'.

Let's Get Kraken



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Making Seattle Proud



- 1) Diversity and Inclusion
- 2) Community Engagement
- 3) Commitment to Sustainability



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THANK YOU



Legislation Text

File #: CB 120139, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE granting Seattle Arena Company, LLC a permit to construct, maintain, and operate a tunnel under and across Thomas Street, east of 1st Avenue North and west of Warren Avenue North, and install permanently tensioned tie-backs in portions of Thomas Street, east of 1st Avenue North and west of 2nd Avenue North, for the life of the Climate Pledge Arena building lease; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

WHEREAS, on January 17, 2017, The City of Seattle (“City”) released a Request for Proposal (“RFP”) for the redevelopment of the arena at Seattle Center; and

WHEREAS, on April 12, 2017, Oak View Group, LLC (“OVG”) submitted to the City a proposal in response to the RFP that included removing the then-existing at-grade loading dock on the south side of the then-existing arena and constructing a new loading dock below grade, accessible by a subterranean vehicle tunnel under and across Thomas Street, east of 1st Avenue North and west of Warren Avenue North; and

WHEREAS, on June 7, 2017, the City selected OVG for the redevelopment of the arena (“Climate Pledge Arena”); and

WHEREAS, the City and OVG entered into a Memorandum of Understanding establishing the process for negotiating the definitive agreements between the parties, including the lease agreement (“Lease”), the development agreement (“Development Agreement”), and the integration agreement (“Integration Agreement”), and on September 24, 2018, these agreements were approved by the City Council in Ordinance 125669 and subsequently signed by the Mayor and OVG; and

WHEREAS, on November 2, 2018, OVG and Seattle Arena Company, LLC (“ArenaCo”) entered into an Assignment and Assumption Agreement by which ArenaCo was assigned and assumed OVG’s rights

and obligations related to OVG’s application for a Significant Structure Term Permit; and

WHEREAS, ArenaCo applied for permission to construct a tunnel under and across Thomas Street, east of 1st Avenue North and west of Warren Avenue North, and install permanently tensioned tie-backs in portions of Thomas Street, east of 1st Avenue North and west of 2nd Avenue North, in the Uptown neighborhood; and

WHEREAS, the Seattle City Council adopted Resolution 31857 and conceptually approved the vehicle tunnel, and adopted Resolution 31888 amending the conceptual approval to include installing the permanently tensioned tie-backs in Thomas Street; and

WHEREAS, ArenaCo has met the obligations described in those resolutions; and

WHEREAS, the vehicle tunnel will provide an off-street loading dock area for large event trucks and typical event services to serve back-of-house operations, removing those activities from surface streets and reducing associated traffic impacts to the surrounding neighborhood, and avoiding impacts to pedestrian travel adjacent to the arena; and

WHEREAS, the permanently tensioned tie-backs ensure the structural integrity of Climate Pledge Arena; and

WHEREAS, the obligations of this ordinance remain in effect until: the ordinance term expires, or the structures are removed, or ArenaCo is relieved of the obligations by the Seattle Department of Transportation Director, or the Seattle City Council passes a new ordinance to renew the permission granted; and

WHEREAS, adopting this ordinance is the culmination of the approval process for the tunnel and the permanently tensioned tie-backs to legally occupy a portion of the public right-of-way, and the adopted ordinance is considered to be the permit; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. **Permission.** Subject to the terms and conditions of this ordinance, the City grants permission (also referred to in this ordinance as a “permit”) to ArenaCo and its successors and assigns as approved by the

Director of the Seattle Department of Transportation (“Director”) according to Section 11 of this ordinance (the party named above and each such approved successor and assign is referred to as the “Permittee”), to construct, maintain, and operate a tunnel under and across Thomas Street, east of 1st Avenue North and west of Warren Avenue North, and install permanently tensioned tie-backs in portions of Thomas Street, east of 1st Avenue North and west of 2nd Avenue North (collectively referred to as “tunnel and permanently tensioned tie-backs”), adjacent in whole or in part to the property legally described below and referred to in this ordinance as the “Property”:

LOT 12, BLOCK 30, D.T. DENNY’S PLAN OF NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 41, IN KING COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF ALLEY VACATED BY CITY OF SEATTLE ORDINANCE NO. 117474 WHICH ATTACHED TO SAID PREMISES BY OPERATION OF LAW.

AND PARCELS L, M, JJ AND KK OF THE CITY OF SEATTLE LOT BOUNDARY ADJUSTMENT NO. 3032466-LU, RECORDED UNDER RECORDING NO. 20181011900001 AND CORRECTED UNDER RECORDING NO. 20181030900005, RECORDS OF KING COUNTY, WASHINGTON;

SITUATE IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON.

Section 2. **Term.** The permission granted to the Permittee is for a term that begins on the effective date of this ordinance and terminates at 11:59 p.m. on the later date of the last day of the Initial Term, or if applicable, at the end of any Extension Term, as those terms are defined in the Lease.

Section 3. **Protection of utilities.** The permission granted is subject to the Permittee bearing the expense of any protection, support, or relocation of existing utilities deemed necessary by the owners of the utilities, and the Permittee being responsible for any damage to the utilities due to the construction, repair, reconstruction, maintenance, operation, or removal of the tunnel and permanently tensioned tie-backs, and for any consequential damages that may result from any damage to utilities or interruption in service caused by any of the foregoing.

Section 4. **Removal for public use or for cause.** The permission granted is subject to use of the street right-of-way or other public place (collectively, “public place”) by the City and the public for travel, utility

purposes, and other public uses or benefits. The City expressly reserves the right to deny renewal, or terminate the permission at any time before expiration of the initial term or any renewal term, and require the Permittee to remove the tunnel and permanently tensioned tie-backs, or any part thereof or installation on the public place, at the Permittee's sole cost and expense if:

- (a) The City Council determines by ordinance that the space occupied by the tunnel and permanently tensioned tie-backs is necessary for any public use or benefit or that the tunnel and permanently tensioned tie-backs interfere with any public use or benefit; or
- (b) The Director determines that use of the tunnel and permanently tensioned tie-backs has been abandoned; or
- (c) The Director determines that any term or condition of this ordinance has been violated, and the violation has not been corrected by the Permittee by the compliance date after a written request by the City to correct the violation, unless a notice to correct is not required due to an immediate threat to the health or safety of the public.

A City Council determination that the space is needed for, or the tunnel and permanently tensioned tie-backs interfere with, a public use or benefit is conclusive and final without any right of the Permittee to resort to the courts to adjudicate the matter.

Section 5. **Permittee's obligation to remove and restore.** If the City terminates the permission, the Permittee shall, at its own expense, remove the tunnel and permanently tensioned tie-backs and all of the Permittee's equipment and property from the public place and replace and restore all portions of the public place that may have been disturbed for any part of the tunnel and permanently tensioned tie-backs in as good condition for public use as existed prior to constructing the tunnel and permanently tensioned tie-backs and in at least as good condition in all respects as the abutting portions of the public place as required by Seattle Department of Transportation ("SDOT") right-of-way restoration standards.

Failure to remove the tunnel and permanently tensioned tie-backs as required by this section is a

violation of Chapter 15.90 of the Seattle Municipal Code (“SMC”) or successor provision; however, applicability of Chapter 15.90 does not preclude any remedies available to the City under this ordinance or any other authority. If the Permittee does not timely fulfill its obligations under this section, the City may in its sole discretion remove the tunnel and permanently tensioned tie-backs and restore the public place at the Permittee’s expense and collect such expense in any manner provided by law.

Upon the Permittee completing removal and restoration in accordance with this section, or upon the City’s completion of the removal and restoration and the Permittee’s payment to the City for the City’s removal and restoration costs, the Director shall issue a certification that the Permittee has fulfilled its removal and restoration obligations under this ordinance. Upon prior notice to the Permittee and entry of written findings that it is in the public interest, the Director may, in the Director’s sole discretion, conditionally or absolutely excuse the Permittee from compliance with all or any of the Permittee’s obligations under this section.

Section 6. **Repair or reconstruction.** The tunnel and permanently tensioned tie-backs shall remain the exclusive responsibility of the Permittee and the Permittee shall maintain the tunnel and permanently tensioned tie-backs in good and safe condition for the protection of the public. The Permittee shall not reconstruct or repair the tunnel and permanently tensioned tie-backs except in strict accordance with plans and specifications approved by the Director. The Director may, in the Director’s judgment, order the tunnel or permanently tensioned tie-backs reconstructed or repaired at the Permittee’s cost and expense because of: the deterioration or unsafe condition of the tunnel or permanently tensioned tie-backs; the installation, construction, reconstruction, maintenance, operation, or repair of any municipally owned public utilities; or for any other cause.

Section 7. **Release, hold harmless, indemnification, and duty to defend.** The Permittee, by accepting the terms of this ordinance, releases the City, its officials, officers, employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense, attorneys’ fees, or damages of every kind and description arising out of or by reason of the tunnel and permanently tensioned tie-backs or this ordinance, including but

not limited to claims resulting from injury, damage, or loss to the Permittee or the Permittee's property.

The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents from and against all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only damages that may result from the sole negligence of the City, that may accrue to, be asserted by, or be suffered by any person or property including, without limitation, damage, death or injury to members of the public or to the Permittee's officers, agents, employees, contractors, invitees, tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:

(a) the existence, condition, construction, reconstruction, modification, maintenance, operation, use, or removal of the tunnel and permanently tensioned tie-backs or any portion thereof, or the use, occupation, or restoration of the public place or any portion thereof by the Permittee or any other person or entity;

(b) anything that has been done or may at any time be done by the Permittee under this ordinance;
or

(c) the Permittee failing or refusing to strictly comply with every provision of this ordinance; or arising out of or by reason of the tunnel and permanently tensioned tie-backs, or this ordinance in any other way.

If any suit, action, or claim of the nature described above is filed, instituted, or begun against the City, the Permittee shall upon notice from the City defend against or settle suit, action, or claim, with counsel acceptable to the City, at the sole cost and expense of the Permittee, and if a judgment is rendered against the City in any suit or action, the Permittee shall fully satisfy the judgment within 90 days after the action or suit has been finally determined and all appeals resolved, if determined adversely to the City; provided, that if Permittee's ability to defend the suit, action, or claim is precluded by the City's delay in providing Permittee with notice, then Permittee shall be relieved of its obligations under this Section 7. If it is determined by a court of competent jurisdiction that Revised Code of Washington (RCW) 4.24.115 applies to this ordinance, then in

the event claims or damages are caused by or result from the concurrent negligence of the City, its agents, contractors, or employees, and the Permittee, its agents, contractors, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Permittee or the Permittee's agents, contractors, or employees.

Section 8. **Insurance.** For as long as the Permittee exercises any permission granted by this ordinance and until the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance, the Permittee shall obtain and maintain in full force and effect, at its own expense, and Permittee shall ensure that its contractors and subcontractors of all tiers shall maintain in full force and effect, insurance and/or self-insurance that protects the Permittee and the City from claims and risks of loss from perils that can be insured against under commercial general liability (CGL) insurance policies in conjunction with:

(a) Construction, reconstruction, modification, operation, maintenance, use, existence, or removal of the tunnel and permanently tensioned tie-backs or any portion thereof, as well as restoration of any disturbed areas of the public place in connection with removal of the tunnel and permanently tensioned tie-backs;

(b) The Permittee's activity upon or the use or occupation of the public place described in Section 1 of this ordinance; and

(c) Claims and risks in connection with activities performed by the Permittee by virtue of the permission granted by this ordinance.

Minimum insurance requirements are CGL insurance written on an occurrence form at least as broad as the Insurance Services Office (ISO) CG 00 01. The City requires insurance coverage to be placed with an insurer admitted and licensed to conduct business in Washington State or with a surplus lines carrier pursuant to chapter 48.15 RCW. If coverage is placed with any other insurer or is partially or wholly self-insured, such insurer(s) or self-insurance is subject to approval by the City's Risk Manager.

Minimum limits of liability shall be \$5,000,000 per Occurrence; \$10,000,000 General Aggregate;

\$5,000,000 Products/Completed Operations Aggregate, including Premises Operations; Personal/Advertising Injury; Contractual Liability, and may be in any combination of primary and umbrella/excess liability policies. Coverage shall include “The City of Seattle, its officers, officials, employees, and agents” as additional insureds for primary and non-contributory limits of liability subject to a Separation of Insureds clause.

If the construction, reconstruction, modification, operation, maintenance, use, existence, or removal of the tunnel and permanently tensioned tie-backs is contracted, applicable minimum coverages and limits of liability may be evidenced by any contractor or subcontractor provided that such insurance fully meets the applicable requirements set forth herein.

Notwithstanding, Permittee shall have authority to determine and adjust insurance coverage and limits for contractor or subcontractors provided that any adjustment or modification to subcontractor insurance requirements shall not reduce or modify Permittee’s obligations under this Agreement.

A. Commercial General Liability (CGL) insurance. CGL insurance must include coverage for:

1. Premises/Operations
2. Products/Completed Operations
3. Personal/Advertising Injury
4. Contractual
5. Independent Contractors
6. Stop Gap (unless insured as Employers Liability under Part B of a Workers

Compensation Insurance Policy)

7. Per project aggregate per ISO CG 25 03 (Aggregate Limits of Insurance per Project) or Equivalent
8. Blasting (if explosives are used in the performance of the Project)

Such insurance must provide a minimum limit of liability of \$5,000,000 each Occurrence

Combined Single Limit Bodily Injury and Property Damage (CSL) except \$1,000,000 each Offense

Personal/Advertising Injury and \$1,000,000 each Accident/Disease - Policy Limit/Disease - each Employee Stop Gap or Employers Liability, \$5,000,000 Products/Completed Operations and \$10,000,000 General Aggregate and includes the following:

a. Products and Completed Operations Additional Insured. Permittee's, its contractor's or subcontractor's CGL insurance must include the City as an additional insured for Products and Completed Operations by providing additional insured status on the ISO CG 20 10 11 85 or CG 20 37 endorsement, or by an equivalent policy or endorsement provision. The Products and Completed Operations additional insured status for the City must remain in effect for not less than three years following the Physical Completion Date or Final Acceptance of the Project (as applicable) by the City.

b. XCU and Subsidence Perils Not Excluded. Permittee's, its contractor's or subcontractor's CGL insurance must not exclude perils generally known as XCU (Explosion, Collapse and Underground Property Damage), Subsidence, Absolute Earth Movement (except as respects earthquake peril only) or any equivalent peril.

B. Automobile Liability Insurance. Automobile Liability for owned, non-owned, hired, and leased vehicles, as applicable, with a minimum limit of liability of \$1,000,000 CSL. If pollutants are to be transported, MCS 90 and CA 99 48 endorsements are required on the Automobile Liability insurance policy unless in-transit pollution risk is covered under a Pollution Liability insurance policy.

C. State of Washington Statutory Workers' Compensation Insurance. Permittee, its contractors or subcontractors must comply with Workers' Compensation coverage as required by Title 51 RCW (Industrial Insurance).

D. Contractor's Pollution Liability Insurance. Permittee, its contractors or subcontractors shall provide a Pollution Liability policy for pollutants that are or may be remediated on- or off-site covering claims, including investigation, defense, or settlement costs and expenses that involve bodily injury and property damage (including natural resources damages and loss of use of tangible property that has not been physically

injured) covering:

1. Pollution conditions caused or made worse by Permittee, its contractors or subcontractors, including clean-up costs for a newly caused condition or a historical condition that is made worse.
2. In-Transit Pollution Liability.
3. The vicarious liability of contractors or subcontractors of any tier.

Such Pollution Liability insurance shall provide a minimum limit of liability of \$5,000,000 each claim with a minimum aggregate limit of 200% of each claim limit. There shall be no requirement for a dedicated project aggregate limit provided that Permittee, its contractors or subcontractors shall (1) cause to be submitted to the City prior to the Notice to Proceed date with its insurance certification a written statement from its authorized insurance representative that the full minimum aggregate limit is available and has not been impaired by any claims reserved on another project, and (2) thereafter, until the completion of the Project, Permittee, its contractors or subcontractors shall provide notice in writing to the City within ten days of Permittee's, contractor's or subcontractor's constructive knowledge of any pending or actual impairment of the aggregate limit. If In-Transit Pollution Liability is required but it is not provided under the Automobile Liability, then Permittee, its contractors or subcontractors must provide evidence of In-Transit Pollution Liability transportation coverage under Permittee's, its contractor's or subcontractor's Pollution Liability policy.

E. Umbrella or Excess Liability Insurance. Permittee, its contractors or subcontractors shall provide minimum Excess or Umbrella Liability coverage limits of \$5,000,000 each occurrence in excess of the primary CGL and Automobile liability insurance limits specified in this Section 8. The minimum total limits requirement of \$5,000,000 may also be satisfied with primary CGL and/or Automobile liability insurance limits or any combination of primary and excess/umbrella limits.

F. Prior to mobilization on-site of its contractor or any subcontractor of any tier, Permittee shall

maintain, or cause to be maintained by its contractor, not at City's expense, Builder's Risk Property insurance, and Permittee shall ensure that such insurance shall be in effect at all times during new construction or structural alteration and not be terminated until the physical completion thereof. Such insurance shall:

1. Cover all portions of the Property, including all new structures and existing structures that are to be structurally altered (but excluding existing structures to be demolished) and all materials, equipment, supplies and temporary structures being built or stored at or near the construction site, or while in transit;
2. Provide "All Risk" coverage in an amount equal to the current 100% completed value replacement cost of all property required to be covered, including the value of existing structures that have been structurally altered (including allowance for "soft costs") against loss from the perils of fire and other risks of direct physical loss not less broad than provided by the insurance industry standard Causes of Loss - Special Form CP 10 30;
3. Include Delay of Opening (loss of income) Endorsement equal to 100% of projected gross annual rents, Soft Cost Endorsement (indemnification of finance charges) and Permission to Occupy Endorsement (permission is automatically granted for occupancy of the insured project for the purpose it was intended);
4. If so required in writing by the City, include earth movement including earthquake and flood perils and such other endorsements and coverages as the City may from time to time reasonably require and any other insurance required by law or by the terms of this ordinance; and
5. Remain in force until coverage for Permittee's Permanent Property Insurance complying with this Section 8 is bound.
6. Payment of deductibles are the responsibility of Permittee, its contractor or subcontractors except for (i) earth movement including earthquake or flood claims, or (ii) all risks claims to the extent damage is not caused by the negligent acts of Permittee, its contractor or any subcontractor.

7. Include The City of Seattle as loss payee as its interest may appear.
8. Endorsed to cover the interests, as they may appear, of contractors and subcontractors of all tiers.

General Conditions (Not Applicable to Washington State Workers Compensation)

(a) Failure on the part of Permittee, its contractors or subcontractors to maintain the insurance as required constitutes a material breach of ordinance, on which the City may, after giving five business days' notice to Permittee, its contractor or subcontractor to correct the breach, may immediately terminate the ordinance or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

(b) Any deductible in excess of \$50,000 or self-insured retention (SIR) in excess of \$50,000 that is not fronted by an insurer must be disclosed and is subject to the City's approval. Upon request by the City, Permittee, its contractors or subcontractors must furnish financial information that the City may reasonably require to assess Permittee's, its contractor's or subcontractor's risk bearing capacity, and must provide a written statement that Permittee, its contractors or subcontractors will defend and indemnify the City against any claim within Permittee's, its contractor's or subcontractor's SIR and is responsible for the cost of any payments for defense and indemnity falling within the SIR at least to the same extent that coverage would be afforded to the City under the relevant insurance policy meeting the requirements stated herein.

(c) Security of Insurers. Insurers shall be licensed to do business in the State of Washington and shall maintain not less than an A- VII A.M. Best's rating unless coverage is procured as surplus lines under chapter 48.15 RCW ("Unauthorized Insurers").

(d) Cancellation. Coverage shall not be cancellable without at least 30 days' advance written notice of cancellation, except ten days' notice with respect to cancellation for non-payment of premium.

(e) Waiver of Subrogation. CGL, Auto, and Employer's Liability insurance required to be maintained by Permittee hereunder shall contain a waiver of subrogation in favor of the City.

(f) CGL Insurance Additional Insured. CGL insurance maintained by Permittee shall include “The City, its officers, elected officials, employees, agents, and volunteers” as additional insureds for primary and non-contributory limits of liability per the ISO CG 20 26 11 85 designated additional insured endorsement or its equivalent with products-completed operations additional insured status for not less than six years following physical completion.

(g) Certificates of Insurance. The Permittee shall each deliver to the City Certificates of Liability Insurance issued in conformance with prevailing established market practice evidencing compliance with the minimum levels of coverages and limits of liability and meeting general conditions stated herein, including but not limited to provision for notice of cancellation as specified herein.

(h) At any time upon the City’s request, Permittee, its contractors or subcontractors must forward to the City a true and certified copy of any insurance policy(s).

(i) No Limitation of Liability. The limits of insurance coverage specified herein in Section 8, Insurance, are minimum limits of insurance coverage only and shall not be deemed to limit the liability of Permittee’s insurer except as respects the stated limit of liability of each policy. Where required to be an additional insured, The City of Seattle shall be so for the full limits of insurance coverage required by the City, whether such limits are primary, excess, contingent or otherwise. Any limitations of insurance liability shall have no effect on Permittee’s obligation to indemnify the City.

(j) This Section 8 must survive the expiration or earlier termination of this ordinance.

Within 60 days after the effective date of this ordinance, the Permittee shall provide to the City, or cause to be provided, certification of insurance coverage including an actual copy of the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to SDOT at an address as the Director may specify in writing from time to time. The Permittee shall provide a certified complete copy of the insurance policy to the City promptly upon request.

If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager may be submitted in lieu of the insurance coverage certification required by this ordinance, if approved in writing by the City's Risk Manager. The letter of certification must provide all information required by the City's Risk Manager and document, to the satisfaction of the City's Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in force. After a self-insurance certification is approved, the City may from time to time subsequently require updated or additional information. The approved self-insured Permittee must provide 30 days' prior notice of any cancellation or material adverse financial condition of its self-insurance program. The City may at any time revoke approval of self-insurance and require the Permittee to obtain and maintain insurance as specified in this ordinance.

In the event that the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in effect the insurance required under this section until the Director has approved the assignment or transfer pursuant to Section 11 of this ordinance.

Section 9. Contractor insurance. The Permittee shall contractually require that any and all of its contractors performing work on any premises contemplated by this permit name "The City of Seattle, its officers, officials, employees and agents" as additional insureds for primary and non-contributory limits of liability on all CGL, Automobile and Pollution liability insurance and/or self-insurance. The Permittee shall also include in all contract documents with its contractors a third-party beneficiary provision extending to the City construction indemnities and warranties granted to the Permittee.

Section 10. Satisfaction of insurance and bond requirements. The insurance requirements of Section 8 and Section 9 of this ordinance may be satisfied by Permittee's compliance with the requirements of Exhibit G of the Lease; provided, that if the policy limits in Exhibit G of the Lease are different than those required by this ordinance, the policy limits described in this ordinance shall control. The Director may adjust minimum liability insurance levels and require surety bond requirements during the term of this permission. If the Director determines that an adjustment is necessary to fully protect the interests of the City, the Director shall

notify the Permittee of the new requirements in writing. The Permittee shall, within 60 days of the date of the notice, provide proof of the adjusted insurance and surety bond levels to the Director.

Section 11. Conditions of assignment or transfer. Upon the satisfaction of the Transfer Conditions (defined below), Permittee may, without obtaining the consent of the Director, assign, sublease, or transfer all or part of its leasehold interest in the Property and the rights conferred in this ordinance (a “Permitted Transfer”) to an affiliate or third-party transferee (each a “Transferee”). “Transfer Conditions” means that (a) the Transferee has accepted in writing all of the terms and conditions of the permission granted by this ordinance together with an acknowledgement that the use of the tunnel and permanently tensioned tie-backs shall not be modified by the Transferee (the “Acknowledgement”) and (b) the Acknowledgement has been delivered to the Director before the Permitted Transfer. From and after satisfaction of the Transfer Conditions, the Transferee shall be conferred with the rights and obligations originally granted to Permittee by this ordinance. The Permittee shall not mortgage, pledge, or encumber the Permittee’s rights granted by this ordinance (an “Encumbrance”) without obtaining the Director’s consent, which consent shall not be unreasonably withheld or conditioned. The Director may approve an Encumbrance by a third-party beneficiary (“Beneficiary”) if: the Beneficiary has delivered to the Director a subordination and non-disturbance agreement acknowledging this ordinance; that Beneficiary’s interest with respect to the Property and related Encumbrance are junior, inferior, subordinate, and subject in right, title, interest, lien, encumbrance, priority and all other respects to this ordinance; Permittee has provided the bond and certification of insurance coverage required under this ordinance; and Permittee has paid any fees due under Sections 12 and 14 of this ordinance.

Section 12. Inspection fees. The Permittee shall, as provided by SMC Chapter 15.76 or successor provision, pay the City the amounts charged by the City to inspect the tunnel and permanently tensioned tie-backs during construction, reconstruction, repair, annual safety inspections, and at other times deemed necessary by the City. An inspection or approval of the tunnel and permanently tensioned tie-backs by the City shall not be construed as a representation, warranty, or assurance to the Permittee or any other person as to the

safety, soundness, or condition of the tunnel and permanently tensioned tie-backs. Any failure by the City to require correction of any defect or condition shall not in any way limit the responsibility or liability of the Permittee.

Section 13. **Inspection reports.** The Permittee shall submit to the Director, or to SDOT at an address specified by the Director, an inspection report that:

- (a) describes the physical dimensions and condition of all load-bearing elements;
- (b) describes any damages or possible repairs to any element of the tunnel and permanently tensioned tie-backs;
- (c) prioritizes all repairs and establishes a timeframe for making repairs; and
- (d) is stamped by a professional structural engineer licensed in the State of Washington.

A report meeting the foregoing requirements shall be submitted within 60 days after the effective date of the ordinance; subsequent reports shall be submitted every two years, provided that in the event of a natural disaster or other event that may have damaged the tunnel or permanently tensioned tie-backs, the Director may require that additional reports be submitted by a date established by the Director. The Permittee has the duty of inspecting and maintaining the tunnel and permanently tensioned tie-backs. The responsibility to submit structural inspection reports periodically or as required by the Director does not waive or alter any of the Permittee's other obligations under this ordinance. The receipt of any reports by the Director shall not create any duties on the part of the Director. Any failure by the Director to require a report, or to require action after receipt of any report, shall not waive or limit the Permittee's obligations.

Section 14. **Annual fee.** Beginning on the effective date of this ordinance the Permittee shall pay an Issuance Fee, and annually thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the Director, an Annual Renewal Fee. All payments shall be made to the City Finance Director for credit to the Transportation Fund.

In consideration of the Memorandum of Understanding between OVG and the City, and the Lease

Agreement, the Development Agreement, and the Integration Agreement, as approved by the City Council by Ordinance 125669, the City will not charge ArenaCo the Annual Use and Occupation Fee for the tunnel and permanently tensioned tie-backs for the term of this permit.

Section 15. Compliance with other laws. The Permittee shall construct, maintain, and operate the tunnel and permanently tensioned tie-backs in compliance with all applicable federal, state, County and City laws and regulations. Without limitation, in all matters pertaining to the tunnel and permanently tensioned tie-backs, the Permittee shall comply with the City's laws prohibiting discrimination in employment and contracting including Seattle's Fair Employment Practices Ordinance, Chapter 14.04, and Fair Contracting Practices Code, Chapter 14.10 (or successor provisions).

Section 16. Acceptance of terms and conditions. The Permittee shall provide evidence of insurance coverage required by Section 8 of this ordinance and the covenant agreement required by Section 17 of this ordinance.

Section 17. Obligations run with the Property and the leasehold estate. The obligations and conditions imposed on the Permittee by this ordinance are covenants that bind Permittee and any Transferee. The Permittee shall, within 60 days of the effective date of this ordinance, and before any Permitted Transfer, deliver to the Director the Covenant Agreement. The "Covenant Agreement" shall be based on a form to be supplied by the Director, reference this ordinance by its ordinance number, reflect and memorialize Permittee's agreement with the obligations and conditions set forth in this ordinance, be signed and acknowledged by the Permittee, and recorded with the King County Recorder's Office and filed with the City Clerk.

Section 18. Section titles. Section titles are for convenient reference only and do not modify or limit the text of a section.

Section 19. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2021, and signed by
me in open session in authentication of its passage this _____ day of _____, 2021.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2021.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2021.

Monica Martinez Simmons, City Clerk

(Seal)

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Seattle Department of Transportation	Amy Gray/206-386-4638	Christie Parker/206-684-5211

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title:

AN ORDINANCE granting Seattle Arena Company, LLC a permit to construct, maintain, and operate a tunnel under and across Thomas Street, east of 1st Avenue North and west of Warren Avenue North, and install permanently tensioned tie-backs in portions of Thomas Street, east of 1st Avenue North and west of 2nd Avenue North, for the life of the Climate Pledge Arena building lease; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

Summary and background of the Legislation:

This legislation would allow Seattle Arena Company, LLC permission to construct, maintain, and operate a tunnel under and across Thomas Street, east of 1st Avenue North and west of Warren Avenue North, and install permanently-tensioned tie-backs in portions of Thomas Street, east of 1st Avenue North and west of 2nd Avenue North, for the life of the Climate Pledge Arena building lease. The lease term is for 39 years with two optional additional 8-year extensions. The legislation specifies the conditions under which permission is granted.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? Yes No

Appropriation change (\$):	General Fund \$		Other \$	
	2021	2022	2021	2022
	\$0	\$0	\$0	\$0
Estimated revenue change (\$):	Revenue to General Fund		Revenue to Other Funds	
	2021	2022	2021	2022
	\$0	\$0		TBD
Positions affected:	No. of Positions		Total FTE Change	
	2021	2022	2021	2022

Does the legislation have other financial impacts to The City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

No.

Is there financial cost or other impacts of *not* implementing the legislation?

If the legislation is not enacted by City Council, the Climate Pledge Arena will not be able to use a below-grade vehicle tunnel to provide back-of-house operations for typical events at the new arena. Additionally, if this Council Bill is not approved, the permanently-tensioned tie backs would have to be removed from Thomas Street. Both of these circumstances would cause a construction delay to for opening the arena on schedule.

3.a. Appropriations

This legislation adds, changes, or deletes appropriations.

3.b. Revenues/Reimbursements

This legislation adds, changes, or deletes revenues or reimbursements.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Dept	Revenue Source	2021 Revenue	2022 Estimated Revenue
TOTAL				

Is this change one-time or ongoing?

Revenue/Reimbursement Notes:

3.c. Positions

This legislation adds, changes, or deletes positions.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

b. Is a public hearing required for this legislation?

No.

c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

d. Does this legislation affect a piece of property?

Yes, the Climate Pledge Arena property legally described in Section 1 of the Council Bill.

e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

This legislation does not have any implications for the principles of the Race and Social Justice Initiative and does not impact vulnerable or historically disadvantaged communities.

f. Climate Change Implications

1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?

N/A

2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.

N/A

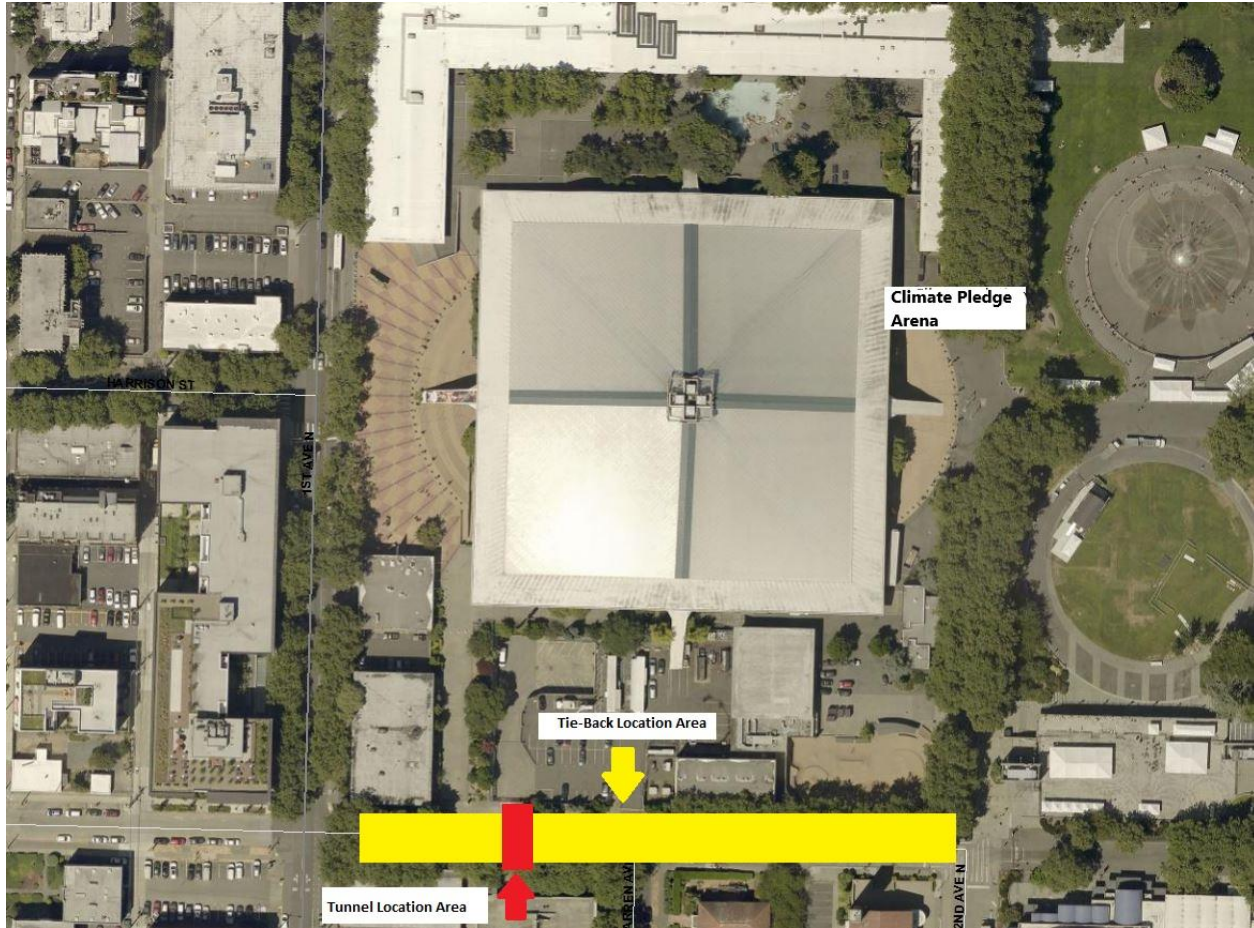
g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)?

N/A

List attachments/exhibits below:

Attachment A – Climate Pledge Arena Tunnel and Tie-Backs Area Map

Climate Pledge Arena Tunnel and Tie-Backs Area Map



Map is for informational purposes only and is not intended to modify or supplement the legal description(s) in the Ordinance.

July 28, 2021

MEMORANDUM

To: Public Assets and Native Communities Committee
From: Lish Whitson, Analyst
Subject: Council Bill 120139: Arena Tunnel and Tie Back Term Permit

On August 3, 2021, the Public Assets and Native Communities Committee (Committee) will consider and may vote on [Council Bill \(CB\) 120139](#), which would grant final approval for a significant structure term permit to Seattle Arena Company to build, operate and maintain a pedestrian tunnel under Thomas Street between Warren Avenue N and 1st Avenue N, and tiebacks beneath Thomas Street between 1st Avenue N and 2nd Avenue N to support the redevelopment of the Climate Pledge Arena in Uptown, Council District 7.

The tunnel connects Climate Pledge Arena to a parking facility on the south side of Thomas Street. It will be the sole access point for trucks and commercial vehicles to access the loading dock adjacent to the lower levels of the arena. The tiebacks provide structural stability to the arena.

Conceptual approval for the tunnel was granted under [Resolution 31857](#) on December 14, 2018. Resolution 31857 was amended by [Resolution 31888](#) to include approval of the tiebacks. The Seattle Department of Transportation has negotiated the provisions of the term permit consistent with the conditions of Resolution 31857 and 31888. CB 120139 would grant approval for the term of the Arena lease, which is in place for 39 years with two optional additional 8-year extensions.

This memorandum summarizes the term permit approval process and describes the conditions of approval under CB 120139.

Significant Structure Term Permits

A significant structure is a structure that has “a long anticipated duration of encroachment, impede the City's or public's flexibility in the use of the public place, or are necessary for the functioning of other property of the permittee.” Examples include tunnels below streets that provide utility, pedestrian or vehicular access; public art placed in right-of-way; and overhead structures attached to buildings. SMC Chapter 15.65 establishes the procedures and criteria for approval of term permits for significant structures.

Recently, the City has granted approval for a fifteen-year term, renewable one time for a total term of thirty years.

[SMC 15.65.040.C](#) identifies ten issues that are considered when reviewing whether approve a significant structure:

1. Adequacy of horizontal, vertical, and other clearances;
2. View blockage and impacts due to reduction of natural light;
3. Construction review is at 60% conceptual approval;
4. Interruption or interference with existing streetscape or other street amenities;
5. Effect on pedestrian activity;
6. Effect on commerce and enjoyment of neighboring land uses;
7. Availability of reasonable alternatives;
8. Effect on traffic and pedestrian safety;
9. Accessibility for the elderly and handicapped; and
10. The public benefit mitigation elements provided by the proposal, to the extent required based on the nature of the structure.

Once the Director of the Seattle Department of Transportation (SDOT) reviews the term permit petition, the SDOT Director transmits a recommendation to the City Council for conceptual approval. The Council's review of the proposal considers the ten items noted above in order to determine whether the structure is in the public interest and no reasonable alternative to the structure exists. The Council may provide conceptual approval, conditional conceptual approval or deny the term permit through a resolution.

If SDOT determines that the construction plans are consistent with the Council's approval or conditional approval, SDOT forwards a bill to the City Council for its final decision to grant or deny the application for a proposed new structure permit.

Climate Pledge Arena Tunnel and Tie Backs

As part of the redevelopment of the Climate Pledge Arena, Seattle Arena Company is building a tunnel under Thomas Street to provide vehicular access to below-grade loading areas within the Arena. Seattle Arena Company has also built permanent tensioned tiebacks under Thomas Street to stabilize the Arena structure.

CB 120139 would grant a significant structure term permit for the Arena tunnel and tiebacks. Resolution 31888 placed the following conditions that the permit seeker would need to meet prior to receiving a term permit:

- (1) Provide engineering and plans for additional review and permitting to SDOT, which the Director will circulate for review and comment to other City departments and to public

and private utilities that may be affected by the installation of the tunnel and the permanent tensioned tie-backs;

- (2) Provide a surety bond, indemnification agreement, and public liability insurance naming the City as an additional insured or self-insurance, all of which are subject to approval by the City's Risk Manager;
- (3) Pay all City permit fees;
- (4) Obtain all necessary permits;
- (5) Maintain and inspect the tunnel and permanent tensioned tie-backs; and
- (6) Upon expiration of the permit remove the tunnel and tie-backs and restore the right-of-way to as good condition for public use as existed prior to constructing the tunnel and permanent tensioned tie-backs and in at least as good condition in all respects as the abutting portions of the public place, as required by SDOT right-of-way restoration standards or as specified by the Director or by the City Council pursuant to the provisions of the final term permit ordinance.

Seattle Arena Company has met conditions (1) through (4). Provisions in CB 120139 would ensure that Seattle Arena Company would meet conditions (5) and (6) for the term of the permit.

Next Steps

If the Communities recommends approval of CB 120139 at August 3, 2021 meeting, it could be considered by the City Council as early as August 9.

cc: Dan Eder, Interim Director
Aly Pennucci, Policy and Budget Manager

Seattle Arena Company, LLC Term Permit Ordinance

Public Assets and Native Communities
Committee

August 4, 2021

Seattle Department of Transportation



City of Seattle

Presentation Overview

- Proposal
- Project area
- Term permit process
- Requested action



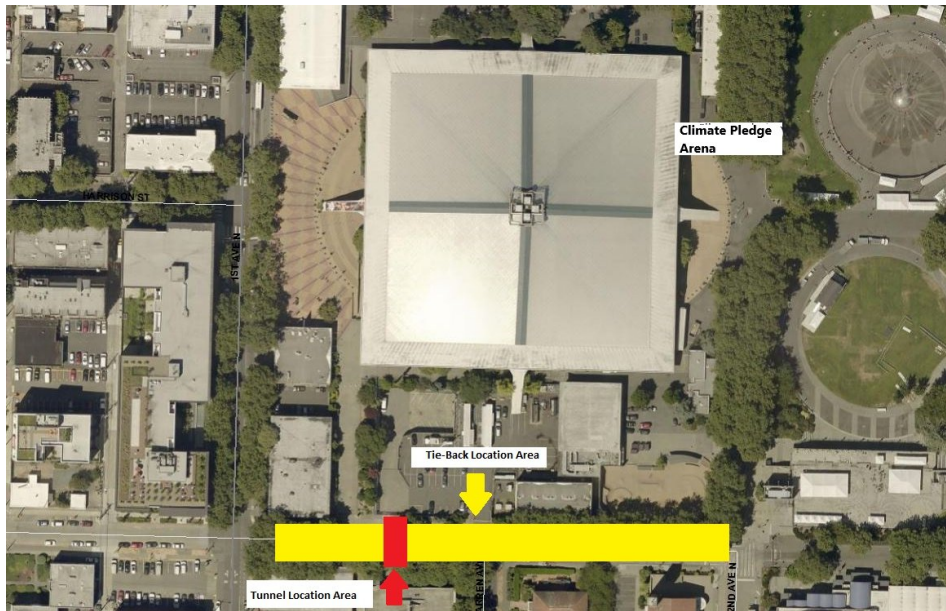
Proposal

- Seattle Arena Company, LLC is seeking a Term Permit for the tunnel and the permanent tensioned tie-back in Thomas St.
- The tunnel and tie-backs were approved elements of the Climate Pledge Arena design as outlined in the City's Development Agreement (approved in 2018).
- The Term Permit is important to define roles and responsibilities for these improvements, given they are in City right-of-way.
- Given the tunnel and tie-backs are part of a City-owned facility and are necessary to meet key public objectives for the building, we are not recommending an annual fee be charged for the Term Permit.
- SDOT recommends approval of the term permit ordinance.

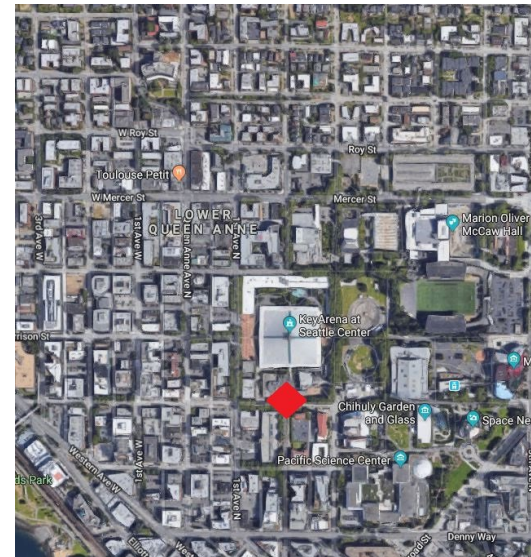


Project proposal & location

Proposal



Project Location



Term permit process

Step 1: Resolution

Adoption of the resolution provides conceptual approval for the private use in the right-of-way, subject to the terms and conditions to be established in the term permit ordinance.

Step 2: Ordinance

Passage of the ordinance issues the permit and details the terms and conditions, including annual fee, maintenance obligations, indemnification, insurance, and bond requirements.



Requested Action

- SDOT is seeking Council passage of this ordinance for the tunnel and permanent tensioned tie-backs for Seattle Arena Company, LLC



Questions?

amy.gray@seattle.gov | (206) 386-4638

www.seattle.gov/transportation





Legislation Text

File #: CB 120141, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to Seattle Parks and Recreation; authorizing the acquisition of real property commonly known as 1024 South Elmgrove Street; authorizing acceptance of a recording of the deed for open space, park, and recreation purposes; and ratifying and confirming certain prior acts.

WHEREAS, the Duwamish River flows into Seattle's Elliott Bay, from its source in the foothills of Mount Rainier; and

WHEREAS, we acknowledge that the Duwamish River flows through lands that have been occupied and stewarded since time immemorial by people from the Duwamish, Suquamish, Muckleshoot, and Yakama Tribes. These and other indigenous peoples have their homes in, travel through, harvest and use the plentiful natural resources of the Duwamish River, Elliott Bay, and the other nearby lands and waters. We honor with gratitude the land itself. We respect the history of all indigenous peoples who historically and currently are part of the Duwamish Valley, and whose people were forcibly dispossessed and removed from their homes and lands by the United States government and the City of Seattle. We are committed to recognizing the ongoing relationship that exists between indigenous peoples and these places; and

WHEREAS, local businesses and populations that include tribal members, low-income, immigrant, and refugee families, live, work, worship, play, and fish along the lower Duwamish River; and

WHEREAS, Duwamish Waterway Park has been identified as an important community asset in need of improvements in multiple community-led plans such as the 2014 South Park Green Space Vision Plan, which identifies community priorities for improved public spaces and guides actions and investments

and highlights the fact that South Park residents and workers have access to 140 square feet of green space per resident versus an average of 387 square feet per resident in Seattle; and

WHEREAS, multiple health inequities and disparities were documented in the Duwamish Valley Cumulative Health Impacts Analysis (2013), including a 13-year life expectancy difference between residents of South Park and people living in more affluent and less diverse neighborhoods within Seattle city limits; and

WHEREAS, in 2015, Resolution 31567 requested City departments to create an Interdepartmental Team (IDT) to continue to identify ongoing projects that serve resident, tribal, and fishing communities in the Duwamish River Valley, coordinate outreach efforts, and consider further actions to protect the health of Duwamish Valley communities including South Park/Georgetown community members; and

WHEREAS, the Race and Social Justice Initiative (RSJI) requires the City to engage communities of color, immigrants, refugees, limited-English proficiency communities, people with low incomes and other most impacted communities in the design and implementation of City projects and programs to ensure racial and social equity and increased community benefit; and

WHEREAS the Equity & Environment Agenda (2016), Seattle’s blueprint and roadmap to advance race and social justice through our environmental work, identified South Park as a focus area; and

WHEREAS, the City completed the Duwamish Valley Action Plan in June 2018, with identified six racial equity outcomes, and strategies and actions that reflected community priorities including increased open spaces and access to the Duwamish River; and

WHEREAS, the City learned from community partners who reached out to City of Seattle staff, of the potential of acquiring a property located on the Duwamish River (“Site”) to enlarge Duwamish Waterway Park and meet community needs; and

WHEREAS, in 2020 the Robert Wood Johnson Foundation (RWJF) awarded the City a \$600,000 grant to work with community partners in the Duwamish Valley on a strategy that will improve health, increase

community resilience, adapt to the impacts of a changing climate, and produce a site plan to guide the acquisition and development of the Site in ways that demonstrate shared decision-making, the advancement of community capacity, and the creation of opportunities for co-developing open space and community supportive spaces; and

WHEREAS, the South Park Capacity Building Group, through which leaders from South Park community organizations collaborate and coordinate efforts to advance community priorities, has prioritized this work and will serve as a project steering committee for the acquisition and development of the Site; and

WHEREAS, the City of Seattle, through its Seattle Parks and Recreation department, appraised and entered into a purchase and sale agreement with Elm Grove, LLC for its property at 1024 South Elm Grove Street, subject to City Council approval and other necessary due diligence, in order to complete the acquisition in a timely manner in order to secure the property for future public uses, including an addition to the existing Duwamish Waterway Park, NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation (“Superintendent”), or the Superintendent’s designee, is authorized, on behalf of The City of Seattle, to acquire the following described real property, situated in the City of Seattle, County of King, State of Washington, and commonly known as the property at 1024 South Elm Grove Street (“Property”), together with all rights, privileges, and other property pertaining thereto, for open space, park, and recreation purposes:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF KING, STATE OF WASHINGTON, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

LOTS 11 THROUGH 20, INCLUSIVE, AND 38 THROUGH 46, ALL IN BLOCK 13, RIVER PARK, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGE 41, IN KING COUNTY, WASHINGTON; EXCEPT THAT PORTION CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 82673 FOR COMMERCIAL

WATERWAY DISTRICT NUMBER 1.

PARCEL B:

TOGETHER WITH THE WEST 112.75 FEET OF THE SOUTH 100 FEET OF THE NORTH 360 FEET OF GOVERNMENT LOT 1, SECTION 32, TOWNSHIP 24 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 82673 FOR COMMERCIAL WATERWAY DISTRICT NUMBER 1.

Section 2. The Superintendent, or the Superintendent's designee, is authorized to execute and perform on behalf of The City of Seattle a Real Estate Purchase and Sale Agreement and First Amendment ("Agreement") with the seller substantially in the form of Attachments 1 and 2 to this ordinance, by which the City will acquire the Property in exchange for a purchase price not to exceed \$3,900,000, as supported by an appraisal, negotiation, and other promises set forth in the Agreement; and to accept a deed for the Property consistent with the terms of the Agreement by executing a Deed Acceptance Certificate substantially in the form of Attachment 3 to this ordinance.

Section 3. The Superintendent is further authorized to execute such further and additional agreements or amendments to the Agreement that the Superintendent determines necessary to effect the acquisition consistent with the terms of this ordinance, including amendments to the Agreement to reduce the purchase price and to extend the closing date and other deadlines set out in the Agreement.

Section 4. The Property shall be placed under the jurisdiction of Seattle Parks and Recreation.

Section 5. Any act consistent with the authority of this ordinance, including but not limited to execution of the Agreement, taken prior to its effective date is ratified and confirmed.

Section 6. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within 10 days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2021, and signed by
me in open session in authentication of its passage this _____ day of _____, 2021.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2021.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2021.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

Attachment 1 - Agreement for Purchase and Sale of Real Property

Attachment 2 - First Amendment to Real Estate Purchase and Sale Agreement

Attachment 3 - Deed Acceptance Certificate

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

This PURCHASE AND SALE AGREEMENT (“Agreement”) is entered into by and between THE CITY OF SEATTLE, a Washington municipal corporation (“Buyer”), and ELM GROVE LLC, a Washington limited liability company (“Seller”), as of the date this Agreement has been executed by both Buyer and Seller (“Effective Date”). Seller and Buyer may be referred to hereinafter individually as “Party” or collectively as the “Parties.”

Intending to be legally bound, for good and valuable consideration, including the mutual covenants and promises of the parties, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

1. Property. The “Property” subject to this Agreement consists of all of the following:

(a) That certain tract and parcel of vacant real property located at 1024 South Elmgrove Street, Tax Parcel Numbers 732790121501 and 322404900209 and more particularly and legally described in Exhibit A and depicted in the map in Exhibit B, attached together with all buildings, structures and other permanent improvements, if any, thereon (the “Real Property”).

(b) To the extent assignable, all rights, privileges, covenants and easements appurtenant to the Real Property, including without limitation all minerals, oil, gas and other hydrocarbon rights on or associated with the land, all development rights, air rights, and any and all appurtenances used in connection with the beneficial use and enjoyment of the Real Property (collectively, the “Appurtenances”).

(c) All of the property referred to in this Agreement as the “Property” or “Real Property.”

2. Purchase. Seller shall sell and convey the Property to Buyer, and Buyer shall purchase the Property from Seller, on the terms, covenants and conditions set forth in this Agreement.

3. Purchase Price.

3.1. Amount. The purchase price (“Purchase Price”) for the Property is Three Million Nine Hundred Thousand and no/100 Dollars (\$3,900,000.00).

3.2. Payment. Buyer shall pay Seller the Purchase Price at Closing. All references to dollars shall mean those amounts in United States currency.

3.3. Deposit. Within ten (10) days of the Effective Date, Buyer will open an escrow account with First American Title Company, 16340 SE 256th St. #B200, Covington, WA 98042 (referred to hereafter as “Escrow Holder” or “Title Company”) and shall deliver to Escrow Holder Fifty Thousand and NO/100 Dollars (\$50,000.00) (the “Deposit”) in immediately available funds, together with the original of the fully executed Agreement. The Deposit shall be applicable to the Purchase Price at Closing, and shall be non-refundable except in event of Seller’s default, Seller’s failure to satisfy its obligations under this Agreement, or Buyer’s decision to terminate the Agreement if Buyer becomes aware of an environmental contamination issue during Buyer’s investigation of the property described in Section 6.

4. Title.

4.1. Condition of Title. Seller shall convey to Buyer a statutory warranty deed, subject only to the Permitted Exceptions (defined in Subsection 4.3 below). Consistent with the Condition of Title in this section, Seller agrees that Title insurance to the Property shall be issued as a standard owner's policy of title insurance, unless Buyer elects to obtain an ALTA extended coverage owner's policy as provided in Section 4.2 below.

4.2. Title Insurance Commitment. Buyer has obtained a current title insurance commitment issued by Title Company, No. 4209-2975812, dated May 17, 2019, including subsequent updates thereto ("Commitment"). Buyer may elect to obtain a 2006 ALTA Owner's Extended Coverage Policy of title insurance (the "Title Policy"). If required by the Title Company to issue an extended coverage owner's ALTA title insurance policy, Buyer shall obtain a survey and title updates for an extended policy at its own expense. Seller shall provide the ALTA affidavits required under Section 8.1(c).

4.3. Permitted Exceptions. Those exceptions to title listed on Exhibit B attached hereto, if any, together with any additional exceptions to title approved in writing by Buyer constitute permitted exceptions ("Permitted Exceptions"). Seller, at its sole cost and expense, shall remove all exceptions other than Permitted Exceptions.

5. Conditions Precedent.

5.1. Conditions Precedent to Buyer's Obligation to Purchase. Buyer's obligations with respect to purchase of the Property and the Closing are subject to fulfillment, or waiver thereof by Buyer in writing, of all conditions contained within this Agreement ("Buyer's Conditions Precedent"), including the following, not later than the Closing Date (unless an earlier date is specified):

(a) Title Policy. The Title Company shall be prepared to issue the Title Policy in the amount of the Purchase Price subject only to preprinted general exceptions contained in the Commitment and Permitted Exceptions (defined Subsection 4.3 above).

(b) Moratorium. No reassessment, reclassification, rezoning or other change to the zoning of Property by judicial or administrative decision or proceedings (including amendments and modifications of any of the foregoing) pending or proposed to be imposed by any governmental or quasi-governmental authority or any public or private utility having jurisdiction over the Property shall have occurred that would adversely impact Buyer's intended use of the Property.

(c) Zoning; Survey. There are no uncured violations of zoning ordinances or other laws, ordinances or restrictions applicable to the Property, and there are no encroachments upon the Property other than as shown on the survey by Duncanson Company, Inc. dated April 9, 2019, a copy of which has been provided to Buyer.

(d) Noncompliance - Violation. Existing uses of the Property are in full compliance with all applicable zoning laws (and applicable variances) and any other local, municipal, regional, state or federal requirements, and the improvements on the Property comply with all applicable building, safety, health, zoning, environmental, subdivision and other laws, ordinances and regulations.

(e) No Actions or Proceedings. There is no action or proceeding pending or threatened, with respect to the title, ownership, maintenance, use or operation of the Property.

(f) No Environmental Violations. The Property is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under, above or about the Property, including but not limited to soil and groundwater conditions.

(g) Representations, Warranties and Covenants of Seller. Seller shall have performed each agreement to be performed by Seller under this Agreement, and Seller's representations and warranties in this Agreement shall be true and correct as of Closing.

(h) No Adverse Changes. As of Closing, there shall have been no adverse change in the physical condition of the Property from the date of this Agreement.

(i) Seller's Deliveries. Seller shall have delivered each of the items described (and no later than the delivery time specified) in Subsection 6.1 to Buyer and in Subsection 8.1 to Escrow Holder.

(j) Investigation. Buyer shall have notified Seller that the condition stated in Subsection 6.3 has been satisfied or waived within the time period required therein.

(k) Ordinance. On or before the Closing Date, an ordinance shall be in effect authorizing the transaction contemplated in this Agreement and appropriating funds to complete this transaction.

(l) No Seller Bankruptcy. If at any time prior to Closing, (i) there shall be filed against or by Seller a petition in bankruptcy or insolvency or a petition seeking to effect any plan or other arrangement with creditors or seeking the appointment of a receiver and the same is not discharged or dismissed before Closing; (ii) a receiver or liquidator is appointed for all or substantially all of Seller's property; (iii) or Seller makes an assignment for the benefit of creditors or takes any other similar action for the benefit or protection of creditors, then Buyer shall have the right in its sole and absolute discretion and in addition to all other remedies available to Buyer pursuant to this Agreement or at law or in equity to cancel and terminate this Agreement after which the Deposit shall be returned to Buyer and neither party shall have any further rights or obligations under this Agreement.

5.2. Benefit of Buyer. The Buyer's Conditions Precedent is solely for the benefit of Buyer and may be waived only in writing by Buyer. Buyer shall have the right to waive any condition. The waiver by Buyer of any condition in any specific circumstances shall not be a waiver of such condition with respect to any other circumstances or a waiver of any other condition and shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller, unless the waiver expressly so provides.

5.3. Termination. If any Buyer's Condition Precedent is not satisfied or waived prior to Closing (or such earlier date as provided elsewhere in this Agreement), then Buyer, in Buyer's sole discretion, shall have the right to terminate this Agreement by written notice to Seller and Escrow Holder, and the parties shall have no further obligations under this Agreement. Seller shall be entitled to retain the non-refundable Deposit, except in event of Seller's default, or Seller's failure to satisfy its obligations under

this Agreement, or Buyer's decision to terminate the Agreement if Buyer becomes aware of an environmental contamination issue during Buyer's investigation of the property described in Section 6, provided that if an environmental contamination issue is discovered, Buyer will make reasonable efforts to reach an agreed solution to that issue pursuant to this Agreement before terminating the Agreement.

6. Investigation of the Property.

6.1. Seller's Initial Deliveries. Within seven (7) days after the Effective Date, Seller shall, at its sole expense, deliver to Buyer (a) a completed disclosure statement for commercial real estate in the form required by Section 64.06.013 of the Revised Code of Washington; (b) all leases, contracts, and accounting records affecting the Property, if any; (c) signed complete copies of all Deeds of Trust, promissory notes, or other financial agreements or documents or conveyance instruments secured by the Property; and (d) other documents, records and materials concerning the operation or physical condition of the Property, including, without limitation, all surveys, maps, plans, soils reports and environmental site assessments in Seller's possession and control.

6.2. Entry. Without limiting any other rights of Buyer under this Agreement, as of the Effective Date, Buyer and Buyer's agents and employees shall have the right to enter the Property to conduct soils, engineering, environmental and other tests, inspections, surveys and investigations at the Property ("Investigations") at Buyer's sole expense. Seller agrees to cooperate with any Investigations made by or at Buyer's direction. The exercise by Buyer of any of the preceding rights or any other act of Buyer shall not negate any representation, warranty or covenant of Seller, or modify any of Buyer's rights or Seller's obligations in the event of any breach by Seller of any of its representations, warranties or covenants under this Agreement. To the extent permitted by applicable law, Buyer shall indemnify and hold Seller harmless from any and all damages, expense, liens or claims (including attorneys' fees) arising from Buyer's exercise of its rights under this Subsection 6.2 or failure to pay third parties, and the provisions of this indemnity shall survive termination of this Agreement. Buyer's activities at the Property shall be conducted during normal business hours, Monday through Friday, and shall not unreasonably interfere with the existing tenant's operations. Buyer shall give Seller and tenant 48 hours prior notice to requested time of access.

6.3. Period for Investigations. Closing of this transaction is conditioned on Buyer's satisfaction with the Property, the suitability of the Property for Buyer's intended uses and the feasibility of this transaction in Buyer's sole and absolute discretion. Buyer shall have until 45 days from the Effective Date, or June 30, 2021, whichever is latest, to conduct its Investigations and to review the items delivered by Seller pursuant to Subsection 6.1 above (the "Contingency Period"). If Buyer fails to notify Seller and the Escrow Holder in writing that this condition is satisfied or waived prior to 5:00 p.m. Pacific Time on the final day of the Contingency Period, then this Agreement shall be deemed terminated, and both Seller and Buyer shall be released and discharged from all further obligations under this Agreement except for those obligations that expressly survive Closing. Seller shall be entitled to retain the non-refundable Deposit, according to Sections 3.3 and 5.3 and, except as provided in Subsection 6.2, neither party shall be subject to a claim by the other for damages of any kind with respect to this Agreement or Buyer's attempt to purchase the Property.

7. Seller's Obligations. From the Effective Date until the Closing Date, Seller shall, at its sole expense:

7.1. Promptly notify Buyer upon learning of any fact or event that would make any of the representations or warranties of Seller contained in this Agreement or any Buyer's Conditions Precedent untrue or misleading in any material respect or that would cause Seller to be in violation of any of its covenants or other obligations hereunder.

7.2. Notify Buyer promptly upon receiving notice of a claim or pending litigation affecting the Property, or notice of any event, transaction, or occurrence before Closing that would materially adversely affect the Property or any part thereof.

7.3. Not convey, mortgage, grant a deed of trust, or contract to do the foregoing or otherwise allow or consent to convey, abandon, relinquish, cloud or encumber title to the Property or any interest therein or part thereof without Buyer's consent.

7.4. Maintain the Property in good order, condition and repair, and otherwise operate the Property and maintain its business records in the same manner as before the making of this Agreement, the same as though Seller were retaining the Property.

7.5. Maintain all casualty, liability and hazard insurance currently in force with respect to the Property through Closing without diminution in coverage.

7.6. Remedy any violations of law or municipal ordinances or regulations of any federal, state, local or other governmental departments of which Seller is aware.

7.7. Take no action that will adversely affect title to the Property nor take action that impairs the issuance of the Title Policy as described in Section 4 of this Agreement.

7.8. Notify Buyer of each event of which Seller becomes aware affecting the Property or any part thereof immediately upon learning of the occurrence of such event.

8. Deliveries to Escrow Holder.

8.1. By Seller. Seller shall deliver or cause to be delivered to Escrow Holder on or prior to the Closing Date the following items, the delivery of each of which shall be a condition to the performance by Buyer of its obligations under this Agreement:

(a) Deed. A statutory warranty deed, duly executed and acknowledged by Seller (the "Deed"), conveying to Buyer fee simple title to the Property, subject only to the Permitted Exceptions.

(b) FIRPTA Affidavit. A certificate evidencing that Seller is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code.

(c) ALTA Affidavits. Any affidavits, certifications or instruments, including any lien affidavits or mechanic's lien indemnifications, duly executed and acknowledged by Seller, as reasonably may be required by the Title Company in order to issue the Title Policy.

(d) Closing Certificates. A certificate of Seller dated as of the Closing Date certifying that all of Seller's representations and warranties remain true as of the Closing Date, or if not, specifying the respect in which any representation or warranty is no longer true.

(e) Certificates of Authority. Such certificates as are necessary or required by Buyer or the Title Company to evidence the authority of Seller and its signatories to execute the instruments to be executed by Seller in connection with this transaction, and evidence that the execution of such instruments has been properly authorized by Seller.

(f) Excise Tax Affidavit. A real estate excise tax affidavit signed by Seller.

(g) Such other instruments or documents as may be reasonably required by the Title Company, or pursuant to the provisions of this Agreement, or as mutually agreed by Seller and Buyer to be necessary to fully consummate the transaction contemplated hereby.

8.2. By Buyer. Buyer shall deliver or cause to be delivered to Escrow Holder on or prior to the Closing Date the following items:

(a) Purchase Price. Buyer shall deliver or cause to be delivered to Escrow Holder on or before the Closing Date cash by federal funds, wire transfer or cashier's check in the amount necessary to pay the balance of the Purchase Price and Buyer's share of closing costs and prorations.

(b) Excise Tax Affidavit. A real estate excise tax affidavit signed by Buyer.

(c) Such other instruments or documents as may be reasonably required by the Title Company, or pursuant to the provisions of this Agreement, or as mutually agreed by Seller and Buyer to be necessary to fully consummate the transaction contemplated hereby.

9. Close of Escrow.

9.1. Time. Closing shall occur in the office of Escrow Holder on a date mutually agreeable to Buyer and Seller after Buyer's Conditions Precedent have been satisfied or waived, but in any event no later than August 30, 2021, unless further extended by written agreement or unless accelerated by written agreement if the Parties conclude an earlier Closing is possible. As used in this Agreement, "Closing," "Closing Date" or "Date of Closing" means the date on which all appropriate documents are recorded, and proceeds of sale are available for disbursement to Seller in accordance with this Agreement. Funds held in reserve accounts pursuant to escrow instructions shall be deemed, for purposes of the definition of "Closing," "Closing Date" and "Date of Closing," as available for disbursement to Seller.

9.2. Closing Costs and Prorations.

(a) Closing Costs. Buyer and Seller shall each pay its own attorneys' fees. Buyer shall pay the cost of recording the Deed, escrow fees, the title insurance premium charged by the Title Company for Buyer's Title Policy and the endorsements required by Buyer, and the cost of any survey required by the Title Company (if any). Seller's monetary liens on the Property, if not previously discharged, shall be discharged in full out of the Purchase Price at Closing. Seller shall pay real estate excise tax, if any is due.

(b) Prorations. Seller shall be responsible for paying real property taxes, general assessments, surface water management fees and other fees (if any) payable to governmental entities, utilities and operating expenses relating to the Property through the Closing Date. If Seller is entitled to a reimbursement for overpayment of real property taxes, it shall be Seller's responsibility to seek such reimbursement from the appropriate taxing authority outside of Closing. Subject to Seller's obligation under Section 6.1(b) to deliver to Buyer leases on the property prior to Closing, Buyer acknowledges that at Closing, Seller will be assigning, and Buyer will be assuming an existing triple net lease on the Property in which the tenant is responsible for maintenance, utilities, taxes and insurance pursuant to the terms of said lease. To the extent the tenant pays expenses set forth herein directly, Escrow Holder shall only pro rate those expenses paid by Seller. For those expenses for which Seller pays, Seller shall provide evidence satisfactory to Buyer that accounts for utility services to the Property, including but not limited to electricity, heating oil (if applicable), natural gas (if applicable), solid waste, water, sewer, telephone, internet service, and cable, are current and there are no delinquent charges owing. Seller shall pay any special assessments against the Property in existence as of the Closing Date through the Closing Date. All expenses of the Property, including but not limited to, real property taxes, surface water management fees and other fees (if any) payable to governmental entities, rents, utility charges, amounts payable under contracts that Buyer elects to accept or assume, annual permits and other expenses normal to ownership, use, operation and maintenance of the Property shall be prorated as of 11:59 p.m. on the Closing Date.

9.3. Procedure. Escrow Holder shall close escrow as follows:

(a) Obtain the release of the Property from any liens described in the Commitment, and delivery of all documents by Seller, and in this Agreement except the Permitted Exceptions;

(b) Confirm with Buyer satisfactory evidence of delivery of all documents by Seller;

(c) Confirm with Seller satisfactory evidence of delivery of all documents by Buyer;

(d) Pay applicable real estate transfer excise taxes and record the Deed;

(e) Complete the prorations and credits;

(f) Issue and deliver the Title Policy to Buyer;

(g) Deliver any other documents deposited by Seller with Escrow Holder to Buyer;

(h) Deliver the Purchase Price less Seller's closing costs and prorations and Buyer credits, if any, to Seller;

(i) Forward to Buyer and Seller, in duplicate, a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited with Escrow Holder, with such recording and filing date endorsed thereon; and

(j) Deliver lease security deposits and prorated rents to Buyer.

9.4. Incorporation of Escrow Instructions. This Agreement shall serve as escrow instructions, and an executed copy of this Agreement shall be deposited by Buyer with Escrow Holder following its execution. The parties may execute additional escrow instructions provided that such additional escrow instructions shall not change the terms of this Agreement.

9.5. Possession. Possession of the Property shall be delivered to Buyer upon Closing, subject to Seller's tenant's rights under existing lease.

9.6. Deliveries Outside of Escrow. On the Closing Date Seller shall deliver to Buyer outside of escrow all original books and records of account, contracts, leases and leasing correspondence, receipts for deposits, unpaid bills and other papers pertaining to the Property, architectural and engineering plans, drawings and specifications for the improvements to the Property, all "As-Built" plans and specifications, original operating permits and certificates relating to use, occupancy or operation of the Property, all advertising materials, booklets, keys and other items, if any, used in Seller's operation of the Property.

10. Brokerage Commission. Seller warrants to Buyer and Buyer warrants to Seller that each party's sole contact with the other and with the Property regarding this transaction has been directly with the other party and has not involved any broker or finder. Seller and Buyer further warrant to each other that no broker or finder can properly claim a right to a commission or finder's fee based upon contacts between the claimant and that party with respect to the other party or the Property. To the extent permitted by applicable law, each party shall indemnify, defend and hold the other party harmless from and against any loss, cost or expense, including, but not limited to, attorneys' fees and court costs, resulting from any claim for a fee or commission by any broker or finder in connection with the Property and this Agreement resulting from the indemnifying party's actions.

11. Condemnation.

11. If there is a condemnation (by an entity other than Buyer) of all or part of the Property initiated before Closing, Seller shall promptly notify Buyer and Buyer shall have the option for ten (10) days following the date the notice is received (a) to proceed with the Closing, in which event all condemnation proceeds already received by Seller by the Closing shall be paid to Buyer and the right to receive such proceeds not yet received by Seller shall be assigned to Buyer at the Closing, or (b) to terminate this Agreement. Unless this Agreement is terminated, Seller shall take no action with respect to any condemnation proceeding without the prior written consent of Buyer. Buyer shall take no action to initiate a condemnation proceeding for all or any portion of the Property.

12. Representations, Warranties and Covenants.

12.1. Seller's Representations and Warranties. In addition to the representations, warranties and covenants contained elsewhere in this Agreement, Seller, as of the Effective Date and as of the Closing Date, makes the following representations, warranties and covenants:

- (a) Title. Seller is the sole owner of the Property.
- (b) Agreements to Transfer or Encumber. Seller has not committed nor obligated itself in any manner whatsoever to sell or encumber the Property or any interest therein to any party other than Buyer, nor committed or obligated to lease all or any portion of the Property.
- (c) Compliance with Law. To the best of Seller's knowledge, the property complies in all material respects (both condition and use) with all applicable statutes, ordinances, codes, rules and regulations of any governmental authority having jurisdiction over the Property (including those related to zoning, building, subdivision, engineering, and Environmental or Safety Laws) that remains uncured.
- (d) Bankruptcy, Etc. No bankruptcy, insolvency, rearrangement or similar action involving Seller or the Property, whether voluntary or involuntary, is pending, threatened, by a third party, or contemplated by Seller.
- (e) Litigation. There is no pending or to Seller's best knowledge threatened in writing, judicial, non-judicial foreclosure, or municipal or administrative proceedings with respect to this transaction or in any manner affecting the Property or any portion thereof or in which Seller is or will be a party by reason of Seller's ownership of the Property.
- (f) Notices. Seller have not received any written notices from any insurance companies, governmental agencies or from any other parties with respect to any violations or other matters concerning the Property.
- (g) Taxes and Assessments. Other than amounts disclosed by the Commitment, to the best of Seller' knowledge, no other property taxes have been or will be assessed against the Property for the current tax year, and there are no general or special assessments or charges that have been levied, assessed or imposed on or against the Property.
- (h) Tax Returns. Seller has filed all local, state and federal tax forms that are required to be filed by Seller, have paid all taxes due and payable by Seller to date and will pay all such taxes that become due and payable by Seller prior to the Closing.
- (i) Underground Storage Tanks; Hazardous Substances. To the best of Seller's knowledge, (i) there are no cisterns, wells, subterranean storage or underground storage tanks on the Property, (ii) there are no Hazardous Substances currently located in, on, or under the Property in a manner or quantity that presently violates any Environmental or Safety Law, and (iii) there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of Hazardous Substances or the violation of Environmental or Safety Laws at the Property. Buyer acknowledges that Buyer is aware that underground storage tanks have been removed from the Property, and that to the best of Seller's knowledge, the area was remediated and Phase One and Phase Two environmental reports will be provided

to Buyer, during the Inspection Period, indicating that no further remediation is required. Buyer agrees to rely solely on Buyer's own inspections.

(j) Violation of Property Restrictions. To the best of Seller's knowledge, the Property and the current use, occupation and condition thereof do not violate any applicable deed restrictions or other covenants, restrictions or agreements (including, without limitation, any of the Permitted Exceptions), site plan approvals, zoning or urban redevelopment plans applicable to the Property.

(k) Tax Valuation/Assessment. Seller has no knowledge and has not received any notice of: (a) proceedings pending for the correction of the assessed valuation of Real Property, or (b) any other pending or threatened special assessments affecting the Real Property.

(l) Authority. Seller has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Seller and constitute the Seller's legal, valid and binding obligation enforceable against Seller in accordance with its terms. The consummation by Seller of the sale of the Property is not in violation of or in conflict with nor does it constitute a default under any of the terms of any agreement or instrument to which Seller is or may be bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(n) No Omissions. All representations and warranties made by Seller in this Agreement, and all information contained in any certificate furnished by Seller to Buyer in connection with this transaction, are free from any untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained herein or therein not misleading. The copies of any documents furnished to Buyer in connection with this transaction are true and complete copies of the documents they purport to be.

(o) Leases, Service Contracts or Other Contracts. Subject to Seller's obligation under Section 6.1(b) to deliver to Buyer leases on the property prior to Closing, the parties acknowledge that there is an existing lease on the Property, which shall be assigned by Seller to Buyer at Closing. Buyer agrees to assume and perform the lease according to its terms and conditions, and further agrees to indemnify and hold Seller harmless from any claims, causes of action, liability, loss or damages, including reasonable attorney's fees, which may occur or arise under the assigned lease by any acts or omissions of Buyer after Closing. This term shall survive Closing. Prior to Closing, Buyer, Seller, and tenant will execute a lease transfer agreement that will confirm the respective parties' contact information, and require tenant to pay Leasehold Excise Tax to Buyer in lieu of property tax payments (special district charges will still be applicable).

(p) Mechanic's Liens. No labor, material or services have been furnished in, on or about the Property or any part thereof that has not been paid in full prior to Closing.

12.2. Seller's Knowledge. Whenever the phrases “to Seller's knowledge” or “to the best of Seller's knowledge” or any similar phrase is used herein, those phrases mean the present, actual knowledge (as opposed to the imputed knowledge) of the fact or condition by Brian Hicks (“Seller's Representative”). The representations and warranties contained in Section 12.1 are the representations and warranties of Seller, not Seller's Representative, and shall not create any individual liability for Seller's Representative. Seller represents and warrants that Seller's representative, Brian Hicks, is the Seller's Representative most knowledgeable regarding the Property.

12.3 Effect of Buyer's Inspections. The effect of the representations and warranties made by Seller in this Agreement shall not be diminished or deemed to be waived by any inspections, tests or investigations made by Buyer or its agents.

12.4 Survival Period. Subject to the provisions of Section 12.5, and notwithstanding anything else to the contrary contained in this Agreement, in any exhibits attached hereto, or in any documents executed or to be executed at Closing or otherwise in connection herewith (collectively, the “Purchase Documents”), all of Seller's representations, warranties, covenants, undertakings, indemnities, and agreements contained in any of the Purchase Documents (collectively, “Seller's Undertakings”) shall survive the Closing for a period of six (6) months (the “Survival Period”).

12.5 Assumption of Liabilities. Buyer, by virtue of the purchase of the Property, will not be required to satisfy any obligation of Seller arising prior to the Closing Date. Other than such obligations so expressly assumed by Buyer or any liens or other obligations with respect to the Property that result from any action or activities by or on behalf of Buyer after the Closing Date, Seller, after the Date of Closing, will pay and discharge any and all liabilities of each and every kind arising out of or by virtue of the possession, ownership or use of the Property prior to the Closing Date, and shall indemnify, defend and hold Buyer harmless therefrom.

12.6 Provide Further Information. From the Effective Date through the Closing Date, Seller will notify Buyer of each event of which Seller becomes aware affecting the Property or any part thereof promptly upon learning of the occurrence of such event.

13. Environmental Compliance. In addition to and without limiting any other representations, warranties, covenants and agreements in this Agreement, Seller represents, warrants, covenants and agrees:

13.1. Hazardous Substances. Except for petroleum products in connection with motor vehicles, lawn mowers, and underground storage tank for heating oil, Seller has not used or stored on, under or about the Property or transported to or from the Property any Hazardous Substance or allowed any other person or entity to do so. Seller has not, generated, manufactured, produced, stored, released, discharged or disposed of on, under, above or about the Property (or off-site of the Property that might affect the Property) or transported to or from the Property, any Hazardous Substance or allowed any other person or entity to do so. Seller has no knowledge nor has Seller observed any questionable practice or conduct indicating that any Hazardous Substance has been used, generated, manufactured, produced, stored, released, discharged or disposed of on, under or above Property (or off-site of the Property that might affect the Property) or transported to or from the Property by any entity, firm or person, or from any source whatsoever.

13.2. Pre-closing Covenant. Seller will not use, generate, manufacture, produce, store, release, discharge or dispose of on, under, above or about the Property (or off-site of the Property that might affect the Property), or transport to or from the Property, any Hazardous Substance or authorize any other person or entity to do so, prior to the Closing.

13.3. Intentionally Omitted.

13.4. Definitions. For the purpose of this Section 13, the following terms shall be defined as provided below unless the context clearly requires a different meaning:

(a) "Environmental or Safety Law" means the Federal Water Pollution Control Act, the Clean Air Act, the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Superfund Amendment and Reauthorization Act, the Toxic Substances Control Act ("TSCA"), the Occupational Safety and Health Act, the Hazardous Materials Transportation Act, the Hazardous Materials Transportation Uniform Safety Act, the Oil Pollution Act of 1990, the Washington Water Pollution Control Act, the Clean Air Washington Act, the Washington Hazardous Waste Management Act ("HWMA"), the Washington Model Toxics Control Act ("MTCA"), the Washington Industrial Safety and Health Act, the Washington Worker and Community Right to Know Act, and the Washington Oil and Hazardous Substance Spill Prevention and Response Act, together with all regulations promulgated under any such authority, and any and all other federal, state, regional, local or international statutes, regulations, rules, ordinances, orders, court or regulatory agency directives, permits, licenses, governmental authorizations and common law causes of action that apply to (1) any hazardous substance or material regulated or restricted under CERCLA, RCRA, TSCA, MTCA, or the HWMA; (2) any other pollutant, contaminant, or waste; (3) the health or safety of persons; or (4) the protection of the environment or land use. "Environmental or Safety Law" includes past and future amendments and supplements.

(b) "Hazardous Substances" means any hazardous, toxic, or dangerous substance, waste, or material that is regulated under any Environmental or Safety Law.

14. As-Is Sale; Release; Seller Disclosure Form.

14.1. As-Is Sale. Buyer acknowledges that, except for the representations and warranties of Seller set forth in this Agreement and the Purchase Documents, the Property is being purchased on an "as is" basis, and that no implied or express representations or warranties have been made by Seller except as expressly provided in this Agreement. Buyer acknowledges that (a) Buyer has had or will have, pursuant to this Agreement, an adequate opportunity to make such legal, factual and other inquiries and investigation as Buyer deems necessary, desirable or appropriate with respect to the Property, and (b) except as otherwise expressly set forth in Section 12.1 of this Agreement, neither Seller, nor anyone acting for or on behalf of Seller, has made any representation, warranty, promise or statement, express or implied, to Buyer, or to anyone acting for or on behalf of Buyer, concerning the Property or the condition, use or development thereof. Buyer represents that, in entering into this Agreement, Buyer has not relied on any representation, warranty, promise or statement, express or implied, of Seller, or anyone acting for or on behalf of Seller,

other than as expressly set forth in Section 12.1 of this Agreement, and that Buyer shall purchase the Property based upon Buyer's own prior investigation and examination of the Property. If Buyer elects to proceed to Closing, such election will be made at Buyer's absolute discretion, in reliance solely upon the tests, analyses, inspections and investigations that Buyer makes, or had the right to make and opted not, or otherwise failed, to make, and not in reliance upon any alleged representation made by or on behalf of Seller, except as set forth in Section 12.1.

15. Survival. Subject to the limitations in Section 12.4, the covenants, agreements, representations and warranties made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof.

16. Entire Agreement. This Agreement contains the entire integrated agreement of the parties, including all of the covenants and conditions between the parties with respect to the subject matter of this Agreement, and supersedes all prior correspondence, agreements and understandings, both verbal and written. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by Seller and Buyer. The parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the parties.

17. Default; Remedies, Specific Performance.

17.1 Seller Default. This Agreement pertains to the conveyance of real property, the unique nature of which is hereby acknowledged by the parties. Consequently, if Seller breaches or defaults under this Agreement or any of the representations, warranties, terms, covenants, conditions or provisions hereof, Buyer shall have, in addition to a claim for damages for such breach or default, and in addition and without prejudice to any other right or remedy available under this Agreement or at law or in equity, the right (a) to specific performance of this Agreement; or (b) to terminate this Agreement upon written notice without liability to Seller.

17.2 Buyer Default. If Buyer fails to perform its obligations pursuant to this Agreement at or prior to Closing for any reason except (a) failure of any condition precedent to Buyer's obligations to Close or (b) failure by Seller to perform its obligations hereunder, then Seller, as its sole and exclusive remedy, may terminate this Agreement and receive the Deposit as liquidated damages and not as penalty, in full satisfaction of claims against Buyer hereunder. Seller and Buyer agree that Seller's damages resulting from Buyer's default are difficult, if not impossible, to determine, and the Deposit is a fair estimate of those damages and has been agreed to in an effort to cause the amount of damages to be certain.

18. Notices. All written notices required to be given pursuant to the terms hereof shall be either delivered personally; deposited in the United States mail, certified mail, return receipt requested, postage prepaid and addressed to the addresses listed below with copies to the parties listed after such address (if any) sent by facsimile transmission to the numbers below or sent by electronic transmission to the email address below, with receipt acknowledged:

SELLER:

Brian Hicks
Elm Grove, LLC
P.O Box 752
Shasta Lake, CA 96019
Facsimile: N/A Telephone: (530) 945-4443
Email: brian@bwhicks.com
And
Michael C. Malnati
Reed Longyear Malnati & Ahrens, PLLC
801 2nd Ave., Suite 1415
Seattle, WA 98104
Telephone: (206) 624-6271
Email: mmalnati@reedlongyearlaw.com

BUYER:

Seattle Department of Parks and Recreation
300 Elliott Avenue West, Suite 100
Seattle, WA 98134
Attn: Lise Ward
Facsimile: (206) 233-7038 Telephone: (206) 733-9106
Email: lise.ward@seattle.gov

The foregoing addresses may be changed by written notice to the other party as provided herein. Mailed notice properly given shall be deemed received five (5) days after deposit in the U.S. mail, certified mail, return receipt requested. Email transmission with read receipt confirmed by email, of any signed original document or notice, and retransmission of any signed email transmission, shall be the same as personal delivery of an original. At the request of either party, or the Escrow Holder, the parties will confirm facsimile or email transmitted signatures by signing an original document.

19. Section 1031 Like-Kind Exchange. If Seller intends for this transaction to be part of a Section 1031 like-kind exchange, then Buyer agrees to cooperate in completion of the like-kind exchange so long as Buyer incurs no additional liability in doing so, and so long as any expenses incurred by Buyer that are related only to the exchange are paid or reimbursed to Buyer at or prior to Closing. Notwithstanding any other term in this Agreement, but subject to obligations under 6.1(b) to deliver any agreements or contracts related to the property to Buyer, Seller may assign this Agreement to its qualified intermediary or any entity set up for the purposes of completing a reverse exchange.

20. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

21. Waivers. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

22. Construction. Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if one of the parties had prepared it, but rather as if both parties had prepared it. If the date on which Buyer or Seller are required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

23. Time. Time is of the essence of every provision of this Agreement.

24. Force Majeure. Performance by Seller or Buyer of their obligations under this Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, or any similar cause beyond the reasonable control of the party who is obligated to render performance (but excluding financial inability to perform, however caused).

25. Successors. The terms, conditions and covenants contained in this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

26. Applicable Law. This Agreement shall be interpreted and governed by the laws of the State of Washington. The venue of any legal action or claim related to this Agreement shall be in the Superior Court for King County.

27. No Third Party Beneficiary. The parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the parties, and therefore, nothing in this Agreement express or implied shall confer upon any person any right or interest whatsoever, other than directly to the parties and their heirs, executors, personal representatives, successors and assigns.

28. Reservation of Rights and Responsibilities. Except as set forth in this Agreement, Buyer and Seller retain all rights, privileges, obligations and remedies as set forth under applicable federal, state or local laws.

29. Entire Agreement. This Agreement (a) constitutes the sole and only agreement of the parties hereto with respect to the subject matter hereof (b) supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter hereof, and (c) cannot be changed except by their written consent.

30. Counterparts. The parties may execute this Agreement in one or more identical counterparts, all of which when taken together will constitute one and the same instrument. A facsimile or electronic mail transmission shall be binding on the party or parties whose signatures appear thereon. If so executed, each counterpart is to be deemed an original for all purposes, and all counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart.

31. No Recording of Agreement. Neither party (nor any of their respective agents or representatives) shall record this Agreement (or any memorandum or short form of this Agreement) without the prior written consent of the other.

32. Incorporation of Exhibits. All exhibits hereto and all other documents and instruments referred to herein or in any exhibit or attachments hereto are incorporated by reference as a part of this Agreement. The Exhibit List to this Agreement shall be as follows:

- Exhibit A Legal Description of Property
- Exhibit B: Map of property
- Exhibit C Permitted Exceptions

Signatures of the Parties to this Agreement are on the following pages.

Exhibit A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF KING, STATE OF WA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

LOTS 11 THROUGH 20, INCLUSIVE, AND 38 THROUGH 46, ALL IN BLOCK 13, RIVER PARK, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGE 41, IN KING COUNTY, WASHINGTON;
EXCEPT THAT PORTION CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 82673 FOR COMMERCIAL WATERWAY DISTRICT NUMBER 1.

PARCEL B:

TOGETHER WITH THE WEST 112.75 FEET OF THE SOUTH 100 FEET OF THE NORTH 360 FEET OF GOVERNMENT LOT 1, SECTION 32, TOWNSHIP 24 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;
EXCEPT THAT PORTION CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 82673 FOR COMMERCIAL WATERWAY DISTRICT NUMBER 1.

Exhibit B

MAP



Exhibit C

PERMITTED EXCEPTIONS

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I-Requirements are met.
2. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records.
3. Any facts, rights, interests, or claims which are not shown by the Public Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
4. Easements, claims of easement or encumbrances which are not shown by the Public Records.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the Public Records.
6. (A) Unpatented mining claims; (B) Reservations or exceptions in patents or in Acts authorizing the issuance thereof; (C) Water rights, claims or title to water; whether or not the matters excepted under (A), (B) or (C) are shown by the Public Records; (D) Indian Tribal Codes or Regulations, Indian Treaty or Aboriginal Rights, including easements or equitable servitudes.
7. Any lien, or right to a lien, for services, labor or materials or medical assistance heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
8. Any service, installation, connection, maintenance, construction, tap or reimbursement charges/costs for sewer, water, garbage or electricity
11. & 12. General Taxes for the year 2021 prorated after the date of closing.
Tax Account Nos.: 732790121501 and 3224049002.
14. No protest can be made against the construction of or assessment for a permanent watermain Agreement and the terms and conditions thereof:

Between: Nellie Manson
And: Seattle Water Department
Recording Information: 6373301
Affects: portion of said premises
15. Conditions, notes, easements, provisions and/or encroachments contained or delineated on the face of the Survey recorded under Recording No. 8804229006.
16. Conditions, notes, easements, provisions and/or encroachments contained or delineated on the face of the Survey recorded under Recording No. 20100719900001.
17. Conditions, notes, easements, provisions and/or encroachments contained or delineated on the face of the Survey recorded under Recording No. 20200113900003.

18. Rights of the State of Washington in and to that portion of said premises, if any, lying in the bed or former bed of Duwamish Waterway, if it is navigable.

19. Any question that may arise due to the shifting and/or changing in the course of Duwamish Waterway.

20. Any prohibition or limitation on the use, occupancy or improvements of the land resulting from the right of the public or riparian owners to use any waters which may cover the land or to use any portion of the land which is now or may formerly have been covered by water.

21. Paramount rights and easements in favor of the United States for commerce, navigation, fisheries and the production of power.

FIRST AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT (“First Amendment”) by and between THE CITY OF SEATTLE, a Washington municipal corporation (“Buyer”), and ELMGROVE, LLC, a Washington limited liability company (“Seller”), amends that certain Real Estate Purchase and Sale Agreement fully executed _____ between the parties for purchase and sale of that certain real property situated in King County, Washington, described in Exhibit A (“Legal Description”) as follows.

1. Subsection 3.3. **Deposit**, is amended as follows: Delete subsection and replace with “**3.3 Deposit. Within ten (10) days of the Effective Date, Buyer will open an escrow account with First American Title Company, 16340 SE 256th St. #B200, Covington, WA 98042 (referred to hereafter as “Escrow Holder” or “Title Company”) and shall deliver to Escrow Holder Fifty Thousand and NO/100 Dollars (\$50,000.00) (the “Deposit”) in immediately available funds, together with the original of the fully executed Agreement. The Deposit shall be applicable to the Purchase Price at Closing, and shall be non-refundable except in event of Seller’s default, Seller’s failure to satisfy its obligations under this Agreement, or Buyer’s decision to terminate the Agreement if Buyer becomes aware of a material environmental contamination issue during Buyer’s investigation of the property described in Section 6, where “material” is defined as any issue that City determines in its reasonable discretion based on any environmental assessment, report or plan concerning the Property that will cost more than \$50,000 to remediate.**”
2. Subsection 5.5. **Termination**, is amended as follows: Delete subsection and replace with “**5.5 Termination. If any Buyer’s Condition Precedent is not satisfied or waived prior to Closing (or such earlier date as provided elsewhere in this Agreement), then Buyer, in Buyer’s sole discretion, shall have the right to terminate this Agreement by written notice to Seller and Escrow Holder, and the parties shall have no further obligations under this Agreement. Seller shall be entitled to retain the non-refundable Deposit, except in event of Seller’s default, or Seller’s failure to satisfy its obligations under this Agreement, or Buyer’s decision to terminate the Agreement if Buyer becomes aware of a material environmental contamination issue during Buyer’s investigation of the property described in Section 6, where “material” is defined as any issue that City determines in its reasonable discretion based on any environmental assessment, report or plan concerning the Property that will cost more than \$50,000 to remediate, provided that if an environmental contamination issue is discovered, Buyer will make reasonable efforts to reach an agreed solution to that issue pursuant to this Agreement before terminating the Agreement.**”
3. All other terms and conditions of the Agreement remain unchanged and in full force and effect.

Signatures of the Parties to this First Amendment are on the following page.

BUYER:

The City of Seattle, a Washington municipal corporation

By: _____
Jesús Aguirre
Superintendent of Parks and Recreation

Date: _____

SELLER:

Elm Grove, LLC, a Washington limited liability company

By: _____
Name: Brian Hicks
Its: _____

ACCEPTANCE

On behalf of the City of Seattle, a municipal corporation of the State of Washington, I, Jesús Aguirre, Superintendent of Seattle Parks and Recreation, accept the interest in real property conveyed herein by this Statutory Warranty Deed, legally described in the Statutory Warranty Deed, from 1024 Elmgrove, LLC, to the City of Seattle, pursuant to the authority conferred by Ordinance _____.

Dated: _____

THE CITY OF SEATTLE

Jesús Aguirre
Superintendent
Seattle Parks and Recreation

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Parks and Recreation	Max Jacobs/684-8018	Anna Hurst/733-9317

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to Seattle Parks and Recreation (SPR); authorizing the acquisition of real property commonly known as 1024 South Elmgrove Street; authorizing acceptance of a recording of the deed for open space, park, and recreation purposes; and ratifying and confirming certain prior acts.

Summary and background of the Legislation: This proposed legislation authorizes the Seattle Parks and Recreation (SPR) to acquire the property located adjacent to Duwamish Waterway Park on the Duwamish River. The legislation also allows for the acceptance of the deed to the subject property for open space, park, and recreation purposes.

The City’s Office of Sustainability and Environment’s Duwamish Valley Program (DVP) has been working with multiple community partners since 2016 to identify ways to meet community needs for community spaces that increase access to equitable opportunities and mitigate displacement pressures. Consistent community priorities include access to open space and the Duwamish River, new spaces to gather, and for supportive community organizations. The Equitable Development Initiative provided capacity building support to the Duwamish Valley Affordable Housing Coalition, which developed a strategy for the City to develop the property, including by potential additions of affordable housing and a multipurpose building hosting community serving space on portions of the site.

In 2019, a community member notified the DVP that there was a 42,930 square-foot property, adjacent to Duwamish Waterway Park, that might be for sale. It had the ability to advance multiple community needs.

Since then, the City received \$600,000 from the Robert Wood Johnson Foundation (RWJF) to work with community partners in the Duwamish Valley on a strategy that will improve health, increase community resilience, and adapt to the impacts of a changing climate. This work will specifically deliver on key actions identified in the City-community shared Duwamish Valley Action Plan.

Securing the property while it being offered for sale now, and during the current planning efforts, will allow City planning efforts and community collaboration to continue while increasing the public land and park and recreational opportunities in the community.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? ___ Yes ___ X No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? ___ Yes ___ No X

The subject property will be acquired with existing appropriation from the Park Fund (10200) backed by future CFT grant revenues. The King County Conservation Futures Tax (CFT) levy equity grant program awarded the City \$1,000,000 to buy the property, and the Advisory Committee stated that it was open to fully funding the acquisition, or another amount, pending the outcome of community conversations. This grant does not require a match.

Does the legislation have other financial impacts to the City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

Once the acquisition is complete, SPR will manage the lease with the existing commercial tenant, with revenues going back to the department to support future expenses. SPR will improve the property when vacant and development funding is available. SPR will incur new maintenance and operating costs for the property after it is developed and may request funding in a forthcoming budget process.

Is there financial cost or other impacts of *not* implementing the legislation?

The property owner is willing to sell the property to the City at this time. If the City does not acquire it at this time, the owner will continue to utilize it for commercial purposes and may accept other offers. The South Park neighborhood will then lose the benefits of the \$600,000 Robert Wood Johnson Foundation grant planning for park and community uses at this site, and the City would lose an opportunity to expand the park and public access to the Duwamish River.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

OPCD is involved as this acquisition aligns with City's Duwamish Valley Program and doing outreach with the community about activating this space. OPCD has contracted with Duwamish Valley Affordable Housing Coalition to develop a potential plan for multipurpose space to address the needs of this unique and underserved community. SPR and other city departments will take this work into account when considering long term plans.

- b. **Is a public hearing required for this legislation?** No.
- c. **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** Not applicable.
- d. **Does this legislation affect a piece of property?** Yes, as depicted in Summary Ex A – Map of Duwamish Waterway Park Addition Acquisition.
- e. **Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?** Over 62% of South Park residents identify as non-white. Only 56% of these residents are within a five-minute walk to open space. The acquisition of the property, the community-led decision-making about development, and the use of Seattle’s Environmental Justice Committee’s “Principles of Public Space for Communities of Color,” will advance the Racial Equity Outcomes in the Duwamish Valley Action Plan. Specifically, it will advance Healthy Communities, Thriving Neighborhoods, Prosperity in Place, Equitable Access to City Resources, and Community Leadership and Capacity Building. The acquisition of this property will eliminate the uncertainty of property use during a community planning process and ensure that the expanded Duwamish Waterway Park can serve the residents of the South Park Community permanently.

OSE will use RWJF funds to hire a community engagement firm to develop an equitable engagement plan that includes interpretation and translation services. The firm will substantively partner with and compensate community organizations and individuals to gain their expertise and assist with engagement in the site planning for this acquisition.

The Office of Housing, is also advancing legislation to acquire land for developing affordable housing in South Park. These two proposed acquisitions are part of an intentional strategy, developed through the Duwamish Valley Program and the Capital Subcabinet, to break the investment and displacement cycle, by making concurrent investments in affordable housing, community-supportive spaces, and open space. This will increase the likelihood that the benefits from City investments accrue to incumbent communities, who have been most affected by inequities and disparities in health, education, opportunity, and access to beautiful green spaces as well as clean air, land, and water.

f. Climate Change Implications

1. **Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?** This acquisition is likely to decrease carbon emissions at this site in that impervious surfaces will be removed after the existing tenant leaves the site and the site is redeveloped for park and community uses. The open space will help sequester carbon and reduce heat island effects.
2. **Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle’s resiliency (or ability to adapt) to climate change in a material way? If so,**

explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.

The City will work with community to lead site planning and conceptual design for the potential expansion of Duwamish Waterway Park in ways that advance their priorities for developing community-supportive spaces and open space, increasing access to the Duwamish River, restoring aquatic habitat, creating a network of connected open spaces along the Duwamish River, and expanding opportunities for cultural activities and uses for the site.

The project will be also a learning opportunity for project partners to identify and learn about best practices for creating a community-led Duwamish Valley Resilience District, including: shared funding; processes (e.g. shared decision-making, multisector collaboration); science (e.g. habitat); health equity; and anti-displacement. These will serve as a model for upcoming multimillion dollar capital investments in the Duwamish Valley, and for supporting community resilience.

- g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program’s desired goal(s). Not applicable.**

List attachments/exhibits below:

Summary Exhibit A – Map of Duwamish Waterway Park Addition
Summary Exhibit B – Fifth Amendment to PSA



**FIFTH AMENDMENT AND ADDENDUM TO REAL ESTATE PURCHASE AND SALE
AGREEMENT AND LIMITED WAIVER AGREEMENT**

FIFTH BA SA

THIS FIFTH AMENDMENT AND ADDENDUM TO REAL ESTATE PURCHASE AND SALE AGREEMENT AND LIMITED WAIVER (~~Fourth~~ Amendment) by and between THE CITY OF SEATTLE, a Washington municipal corporation ("Buyer"), and ELMGROVE, LLC, a Washington limited liability company ("Seller"), amends, serves as an addendum to, and waives certain rights held by Buyer in connection with the Real Estate Purchase and Sale Agreement, ("PSA") executed by Buyer and Seller on May 27, 2021 and previously amended through amendments dated May 27, 2021, July 9, 2021, July 16, 2021, and July 22, 2021 with respect to Buyer's purchase and Seller's sale of that certain real property, "Property," situated in King County, Washington, identified as:

That certain tract and parcel of vacant real property located at 1024 South Elmgrove Street, Tax Parcel Numbers 732790121501 and 322404900209 and more particularly and legally described in Exhibit A and depicted in Exhibit B, of the PSA along with all Appurtenances to the Property set out in the PSA.

AMENDMENT

1. Section 3.1 (Purchase Price; Amount) of the PSA, is amended to reduce the Purchase Price by fifty thousand dollars (\$50,000) as follows: Replace "Three Million Nine Hundred Thousand and no/100 Dollars (\$3,900,000)" with "Three Million Eight Hundred and Fifty Thousand and No/100 Dollars (\$3,850,000)."
2. Section 4 (Title), Subsection 4.3 (Permitted Exceptions) of the PSA, and Exhibit C to the PSA ("Permitted Exceptions") is amended to include that certain Commercial Lease by and between Seller as "Lessor" and United Site Services of Nevada, Inc. as "Lessee" dated March 27, 2020 (the "Lease") as a Permitted Exception. Seller and Buyer shall execute an Assignment of Lease at Closing, with the appropriate documentation provided by the Escrow Agent, or by Seller, for Buyer's approval. The Assignment of Lease shall comply with Washington law.
3. Section 8.1 (Deliveries to Escrow Holder by Seller) of the PSA shall be amended to add a new subsection (h) as follows:

(h) Assignment of Lease. Seller shall provide, unless the Parties mutually agree that Escrow Holder or Buyer shall provide such document, an Assignment of Lease or other document evidencing Seller's intent to assign the Lease and Buyer's intent to assume the Lease to be executed by the Buyer and Seller at Closing.

ADDENDUM

4. The Parties agree that the Phase II Environmental Site Assessment Soil Sampling Report, dated June 24, 2021 and prepared by ECO Compliance Corporation ("Phase II Report"), attached as Exhibit A, identified Hazardous Substances, as defined in Section 13.4(b) of the PSA, on the Property. The Phase II Report identifies several Hazardous Substances, or,

“compounds of concern” as they are described in the Phase II Report, detected through analysis of soil samples collected at the Property (“Reported Substances”) and sets out the concentrations of those compounds within the samples. Notwithstanding the Reported Substances, and in consideration for the reduction in the Purchase Price set out in Section 1 of this Amendment, Buyer agrees to waive certain rights under the PSA only with respect to the Reported Substances, as follows:

5.1 BH JA

07/27/2021

- a. Pursuant to Section ~~3~~ 2 of the PSA, Buyer waives as a condition precedent only with respect to the Reported Substances, the matters set out in Sections 5(d) and 5(e) of the PSA.
- b. Buyer waives and agrees that Seller has satisfied Seller’s disclosure and notice obligations under Sections 7.1, 7.2 and 7.8 of the PSA only with respect to the Reported Substances.
- c. Buyer waives Seller’s obligations under Sections 7.4 and 7.6 only with respect to the Reported Substances.
- d. Buyer waives and agrees that disclosure of Hazardous Substances in the Phase II Report satisfies Seller’s duties under Sections 12.1(c), 12.1(e), 12.1(f), 12.1(i), 12.1(j), 12.1(n) and Section 13 of the PSA only with respect to the Reported Substances. No further action is required by Seller in connection with the representations, warranties, covenants and agreements set out in those Sections only with respect to the Reported Substances.
- e. Buyer waives Seller’s assumption of liabilities under Section 12.5 only with respect to costs associated with remediating the Reported Substances.
- f. Buyer agrees that the matters identified in the Phase II Report are known to Seller and constitute the state of the property “as-is” under Section 14.1 of the PSA. If Buyer elects to proceed to Closing under the PSA, such election will be made at Buyer’s absolute discretion. Buyer’s reliance on Seller’s representations in Section 12.1 of the PSA is limited by and subject to this Section 4 of this ~~Fourth~~ Amendment.
- g. Buyer hereby notifies Seller that the feasibility study and the ~~Fourth~~ ^{FIFTH} conditions of Section 6.3 are satisfied, notwithstanding the results of the Phase II Report and the presence of the Report Substances on the Property.

EV BH JA

07/27/2021

WAIVER

- 5. In consideration for the reduction of the Purchase Price set out in Section 1 of this ~~Fourth~~ ^{FIFTH} Amendment, and upon the close of the property purchase set out in the PSA, as amended for the agreed purchase price of \$3,850,000 described herein, Buyer does hereby waive, release and forever discharge the Seller from any and all actual, threatened or potential claims by City and its successors and assigns, whether known or unknown, resulting from or connected to the threatened or actual release of Reported Substances at, on or from the Property.
- 6. All other terms and conditions of the PSA remain unchanged and in full force and effect.

FIFTH BH JA

07/27/2021

SIGNATURES ON NEXT PAGE

BUYER:


The City of Seattle, a Washington municipal corporation

By: 
Jesus Aguirre (07/23/2021 11:39 PDT)
Jesus Aguirre
Superintendent of Parks and Recreation

Date: **07/23/2021** -

SELLER:

Elm Grove, LLC, a Washington limited liability company

By: 
Name: Brian Hicks
Its: *HAIJ* c:-

Signature: 
Jesus Aguirre (10/27, 2021 10:11 PDT)

Email: JESUS.AGUIRRE@SEATTLE.GOV

Duwamish Waterway Park Acquisition

City Council Public Assets and Native Communities Committee

August 3, 2021

Seattle Parks and Recreation



City of Seattle 102

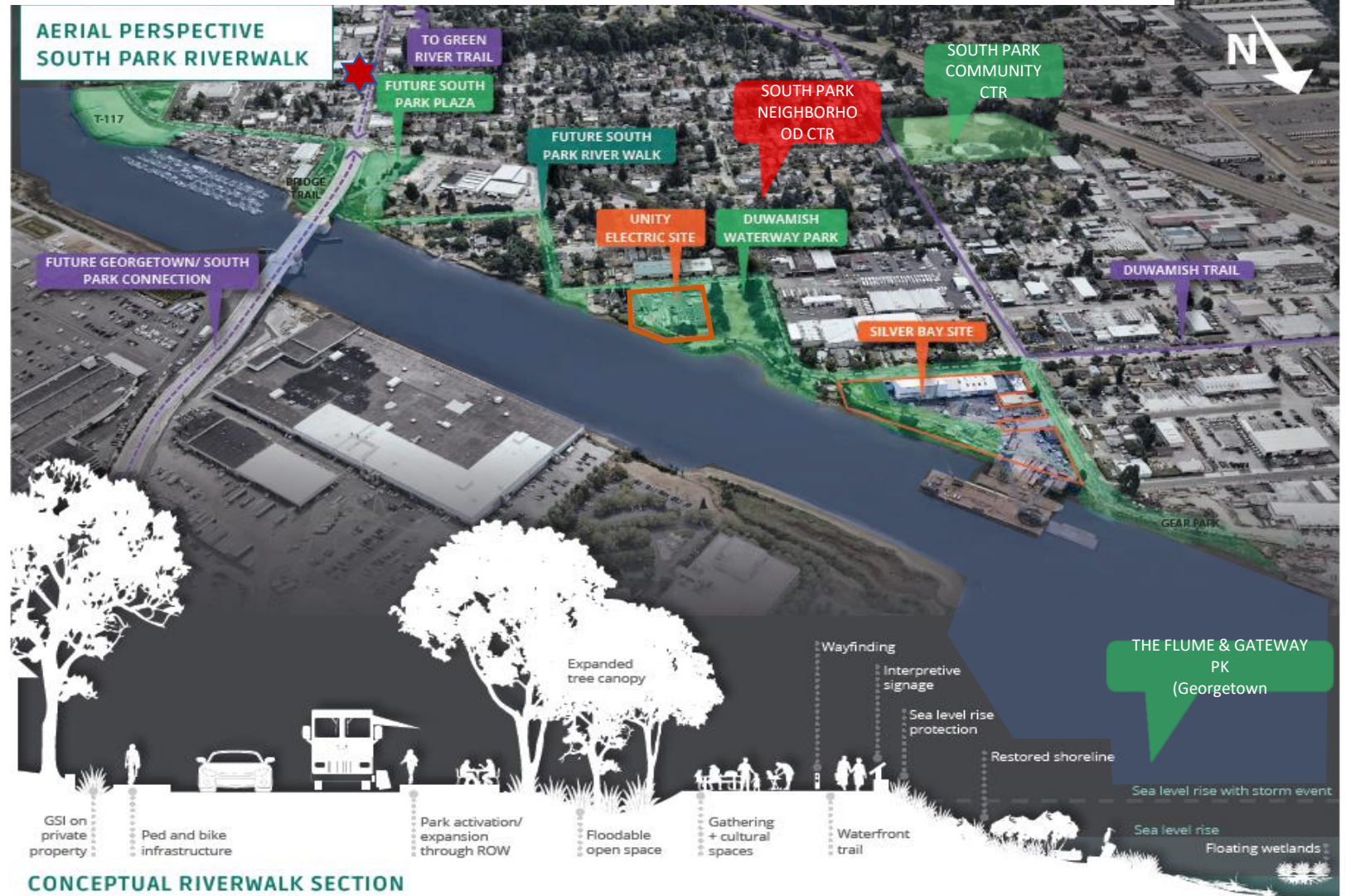
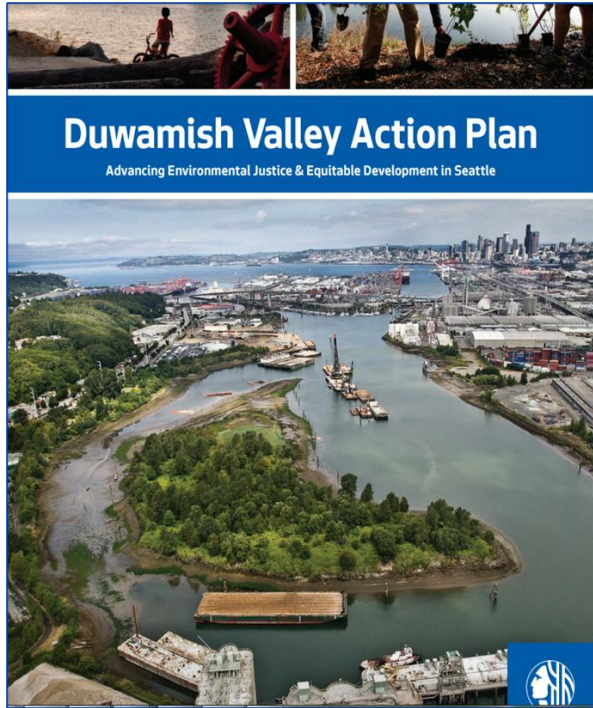
Overview

- Seattle Parks and Recreation (SPR) seeks to acquire property adjacent to Duwamish Waterway Park, pending Council approval
- SPR has reached agreement with property owner to acquire land
- Acquisition will expand existing park
- After SPR acquires property, Office of Planning and Community Development (OPCD) will lead community process re: future uses



Relation to Other City Investments

Multiple departments coordinating and aligning investments



Property Description

- **Location:** On S Elmgrove St. between 10th & 12th avenues
- **Size:** Nearly 1 acre (42,930 sq. ft.)
- **Current Use:** Buildings, parking lot; SPR to assume lease with tenant
- **Condition:** Phase 1 and 2 environmental testing complete – some heavy metals found
- **Authorized Acq. Amount:** \$3.9 million



Background and Next Steps

- South Park community members worked with SPR and the Seattle Parks Foundation to obtain \$1 million grant from County towards purchase
- Potential for additional funding from multiple grant sources
- Property offers expanded recreational space, waterfront access, potential for shoreline restoration
- Once acquisition is completed, OPCD will lead community-based planning process



Questions?





Legislation Text

File #: CB 120140, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to Seattle Parks and Recreation (SPR); authorizing the acquisition of real property commonly known as 3638 34th Avenue South; authorizing acceptance of a recording of the deed for open space, park, and recreation purposes; and ratifying and confirming certain prior acts.

WHEREAS, Ordinance 122749 authorized the 2008 Parks and Green Spaces Levy and identified the North

Rainier Hub Urban Village as a target for acquisition funding due to its identification in the Parks and

Recreation 2006 Development Plan and Gap Analysis as being deficient in open space relative to the

City's comprehensive plan goals; and

WHEREAS, Ordinance 123709 authorized the purchase of the property commonly known as 3640 35th Avenue

South for open space, park, and recreation purposes; and

WHEREAS, said property, being 6,650 square feet in size, did not meet Seattle Parks and Recreation's (SPR)

10,000-square-foot minimum size requirement for filling a park, recreation, and open space service gap;

and

WHEREAS, in August 2014, voters approved Proposition 1, creating a metropolitan park district contiguous

with the borders of the city of Seattle, known as the Seattle Park District, as permitted under Chapter

35.61 RCW; and

WHEREAS, Ordinance 124868 authorized the purchase of the property commonly known as 3650 34th Avenue

South, being 25,920 square feet in size, for open space, park, and recreation purposes; and

WHEREAS, public park development planning between SPR and the community revealed a desire on the part

of park users to increase the utility of the park site and create a gateway entrance at the corner of 34th

Avenue South and South Charlestown Street through the purchase of an additional parcel; and

WHEREAS, Ordinance 125537 authorized the purchase of the property commonly known as 3656 34th Avenue South, being 6,617 square feet in size, for open space, park and recreation purposes; and

WHEREAS, said land assemblage resulted in a land-banked park site 39,187 square feet in size (0.90 acres);

and

WHEREAS, the 2017 Park Plan used race, equity and health, poverty and income, and population density mapping, among other criteria, to help identify priority areas for the Long-Term Acquisition Strategy;

and

WHEREAS, the 2017 Park Plan identified the North Rainier Hub Urban Village as having among the highest occurrence levels in the city of obesity, diabetes, and lack of physical activity, based on socio-economic data correlated with health data; and

WHEREAS, SPR's public park development planning process, with the adjoining community comprised of residents of dense multifamily housing built for large families and seniors, revealed a desire on the part of the future park users to increase the utility of the park site and create a gateway entrance at the corner of 34th Avenue South and South Charlestown Street through the purchase of an additional parcel; and

WHEREAS, the 2017 Park Plan identifies a neighborhood park as being between 0.25 and 9 acres in size; and

WHEREAS, at 39,187 square feet, the existing park site exceeds the 10,000-square-foot minimum size to meet walking distance criteria to fill a service gap; however, it is too small to provide features and programming to address the existing equity and health disparities compared to other areas of the city;

and

WHEREAS, there exists an opportunity, with a willing seller, to execute the final acquisition of an adjoining 12,960-square-foot parcel at 3638 34th Avenue South, which could enhance connectivity both to the senior residents to the north and the immediate surrounding neighbors, and create an urban park that will provide this growing multi-generational neighborhood with breathing space, open space, and active

space; and

WHEREAS, this acquisition would complete almost ten years of property assemblage and result in a park site of significant size at 1.20 acres (52,147 square feet) that would be difficult to replicate in this competitive real estate market; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation (“Superintendent”), or the Superintendent’s designee, is authorized, on behalf of The City of Seattle, to acquire the following described real property, situated in the City of Seattle, County of King, State of Washington, and commonly known as the property at 3638 34th Avenue South (“Property”), together with all rights, privileges, and other property pertaining thereto, for open space, park, and recreation purposes:

The land referred to hereinbelow is situated in the County of King, State of Washington, and is described as follows:

LOTS 3 AND 4 AND LOTS 17 AND 18 IN BLOCK 44, C.D. HILLMAN’S PLAT OF RAINIER BOULEVARD GARDEN ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 12 OF PLATS, PAGE 65, IN KING COUNTY, WASHINGTON.

Section 2. The Superintendent, or the Superintendent’s designee, is authorized to execute and perform on behalf of The City of Seattle a Real Estate Purchase and Sale Agreement (“Agreement”) with the seller substantially in the form of Attachment 1 to this ordinance, by which the City will acquire the Property in exchange for a purchase price not to exceed \$2,000,000, as supported by an appraisal, negotiation, and other promises set forth in the Agreement; and to accept a deed for the Property consistent with the terms of the Agreement by executing a Deed Acceptance Certificate substantially in the form of Attachment 2 to this ordinance.

Section 3. The Property shall be placed under the jurisdiction of Seattle Parks and Recreation.

Section 4. Any act consistent with the authority of this ordinance taken prior to its effective date is

ratified and confirmed.

Section 5. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within 10 days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2021, and signed by me in open session in authentication of its passage this ____ day of _____, 2021.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2021.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2021.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:
Attachment 1 - Agreement for Purchase and Sale of Real Property

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

This PURCHASE AND SALE AGREEMENT (“Agreement”) is entered into by and between THE CITY OF SEATTLE, a Washington municipal corporation (“Buyer”), and BLUEPRINT CAPITAL SERVICES LLC, a Washington limited liability company (“Seller”), as of the date this Agreement has been executed by both Buyer and Seller (“Effective Date”). Seller and Buyer may be referred to hereinafter individually as “Party” or collectively as the “Parties.”

Whereas, Seller is in contract to purchase Property and acquire it on or before June 30, 2021; and

Whereas, Buyer and Seller wish to enter into this agreement for the Buyer’s purchase of the property after Seller demolishes the existing building and performs site remediation;

NOW THEREFORE,

Intending to be legally bound, for good and valuable consideration, including the mutual covenants and promises of the parties, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

1. Property. The “Property” subject to this Agreement consists of all of the following:

1.1. That certain tract and parcel of vacant real property located at 3638 34th Avenue South, Seattle, WA 98144, Tax Parcel Number 335740-0085, and more particularly and legally described in Exhibit A and depicted in the map in Exhibit B, attached together with all buildings, structures and other permanent improvements, if any, thereon (the “Real Property”).

1.2. To the extent assignable, all rights, privileges, covenants and easements appurtenant to the Real Property, including without limitation all minerals, oil, gas and other hydrocarbon rights on or associated with the land, all development rights, air rights, and any and all appurtenances used in connection with the beneficial use and enjoyment of the Real Property (collectively, the “Appurtenances”).

1.3. All of the property referred to in this Agreement as the “Property” or “Real Property.”

2. Purchase. Seller shall sell and convey the Property to Buyer, and Buyer shall purchase the Property from Seller, on the terms, covenants and conditions set forth in this Agreement.

3. Purchase Price.

3.1. Amount. The purchase price (“Purchase Price”) for the Property is Two Million and no/100 Dollars (\$2,000,000.00).

3.2. Payment. Buyer shall pay Seller the Purchase Price at Closing. All references to dollars shall mean those amounts in United States currency.

3.3. Deposit. Within ten (10) days of the Effective Date, Buyer will open an escrow account with First American Title Company, 16340 SE 256th St. #B200, Covington, WA 98042 (referred to

hereafter as “Escrow Holder” or “Title Company”) and shall deliver to Escrow Holder Five Thousand and NO/100 Dollars (\$5,000.00) (the “Deposit”) in immediately available funds, together with the original of the fully executed Agreement. Escrow Holder shall place the Deposit in an interest-bearing account for the benefit of the Parties. Escrow Holder shall apply or disburse the Deposit together with interest, if any, as provided in this Agreement. At Closing, Escrow Holder shall apply the Deposit together with interest, if any, to the Purchase Price.

4. Title.

4.1. Condition of Title. Seller shall convey to Buyer a statutory warranty deed, subject only to the Permitted Exceptions (defined in Subsection 4.3 below). Consistent with the Condition of Title in this section, Seller agrees that Title insurance to the Property shall be issued as a standard owner’s policy of title insurance, unless Buyer elects to obtain an ALTA extended coverage owner’s policy as provided in Section 4.2 below.

4.2. Title Insurance Commitment. Buyer has obtained a current title insurance commitment issued by Title Company, No. 4209-3567706, dated August 20, 2020 (“Commitment”). Buyer may elect to obtain a 2006 ALTA Owner’s Extended Coverage Policy of title insurance (the “Title Policy”). If required by the Title Company to issue an extended coverage owner’s ALTA title insurance policy, Buyer shall obtain a survey and title updates for an extended policy at its own expense. Seller shall provide the ALTA affidavits required under Section 8.1(c).

4.3. Permitted Exceptions. Those exceptions to title listed on Exhibit C attached hereto, if any, together with any additional exceptions to title approved in writing by Buyer constitute permitted exceptions (“Permitted Exceptions”). Seller, at its sole cost and expense, shall remove all exceptions other than Permitted Exceptions.

5. Conditions Precedent.

5.1. Conditions Precedent to Buyer’s Obligation to Purchase. Buyer’s obligations with respect to purchase of the Property and the Closing are subject to fulfillment, or waiver thereof by Buyer in writing, of all conditions contained within this Agreement (“Buyer’s Conditions Precedent”), including the following, not later than the Closing Date (unless an earlier date is specified):

(a) Seller in Title. The Seller owns the Property.

(b) Title Policy. The Title Company shall be prepared to issue the Title Policy in the amount of the Purchase Price subject only to preprinted general exceptions contained in the Commitment and Permitted Exceptions (defined Subsection 4.3 above).

(c) Moratorium. No reassessment, reclassification, rezoning or other change to the zoning of Property by judicial or administrative decision or proceedings (including amendments and modifications of any of the foregoing) pending or proposed to be imposed by any governmental or quasi-governmental authority or any public or private utility having jurisdiction over the Property shall have occurred that would adversely impact Buyer’s intended use of the Property.

(d) Zoning; Survey. There are no uncured violations of zoning ordinances or other laws, ordinances or restrictions applicable to the Property, and there are no encroachments upon the Property other than as shown on the survey by Duncanson Company, Inc. dated April 9, 2019, a copy of which has been provided to Buyer.

(e) Noncompliance - Violation. Existing uses of the Property are in full compliance with all applicable zoning laws (and applicable variances) and any other local, municipal, regional, state or federal requirements, and the improvements on the Property comply with all applicable building, safety, health, zoning, environmental, subdivision and other laws, ordinances and regulations.

(f) No Actions or Proceedings. There is no action or proceeding pending or threatened, with respect to the title, ownership, maintenance, use or operation of the Property.

(g) No Environmental Violations. The Property is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under, above or about the Property, including but not limited to soil and groundwater conditions.

(h) Representations, Warranties and Covenants of Seller. Seller shall have performed each agreement to be performed by Seller under this Agreement, and Seller's representations and warranties in this Agreement shall be true and correct as of Closing.

(i) No Adverse Changes. As of Closing, there shall have been no adverse change in the physical condition of the Property from the date of this Agreement.

(j) Seller's Deliveries. Seller shall have delivered each of the items described (and no later than the delivery time specified) in Subsection 6.1 to Buyer and in Subsection 8.1 to Escrow Holder.

(k) Investigation. Buyer shall have notified Seller that the condition stated in Subsection 6.3 has been satisfied or waived within the time period required therein.

(l) Ordinance. On or before the Closing Date, an ordinance shall be in effect authorizing the transaction contemplated in this Agreement and appropriating funds to complete this transaction.

(m) No Seller Bankruptcy. If at any time prior to Closing, (i) there shall be filed against or by Seller a petition in bankruptcy or insolvency or a petition seeking to effect any plan or other arrangement with creditors or seeking the appointment of a receiver and the same is not discharged or dismissed before Closing; (ii) a receiver or liquidator is appointed for all or substantially all of Seller's property; (iii) or Seller makes an assignment for the benefit of creditors or takes any other similar action for the benefit or protection of creditors, then Buyer shall have the right in its sole and absolute discretion and in addition to all other remedies available to Buyer pursuant to this Agreement or at law or in equity to cancel and terminate this Agreement after which the Deposit shall be returned to Buyer and neither party shall have any further rights or obligations under this Agreement.

(n) Debris and Personal Property. On the Date of Closing, the Property shall be free of garbage, waste, debris, and personal property. Seller holds Buyer harmless from all claims and expenses arising from removal and disposal of garbage, waste, debris, and personal property.

(o) Demolition and Remediation. On the Date of Closing, Seller will have demolished the existing building, performed site remediation (including proper removal and disposal of any Underground Storage Tanks encountered during site remediation, and delivered confirmation documents, including, but not limited to inspection reports, confirmation testing, disposal receipts and an Independent Remedial Action Report, seven (7) days prior, to the satisfaction of Buyer, and Buyer will have performed a final inspection of the Property.

5.2. Benefit of Buyer. The Buyer's Conditions Precedent is solely for the benefit of Buyer and may be waived only in writing by Buyer. Buyer shall have the right to waive any condition. The waiver by Buyer of any condition in any specific circumstances shall not be a waiver of such condition with respect to any other circumstances or a waiver of any other condition and shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller, unless the waiver expressly so provides.

5.3. Termination. If any Buyer's Condition Precedent is not satisfied or waived prior to Closing (or such earlier date as provided elsewhere in this Agreement), then Buyer, in Buyer's sole discretion, shall have the right to terminate this Agreement by written notice to Seller and Escrow Holder, and the parties shall have no further obligations under this Agreement, except that Buyer shall be entitled to return of the Deposit together with interest, if any, and Seller and Buyer shall be entitled to return of any documents deposited with Escrow Holder.

6. Investigation of the Property.

6.1. Seller's Initial Deliveries. Within seven (7) days after the Effective Date, Seller shall, at its sole expense, deliver to Buyer (a) all contracts and accounting records affecting the Property, if any; (b) a completed disclosure statement for commercial real estate in the form required by Section 64.06.013 of the Revised Code of Washington; (c) signed complete copies of all Deeds of Trust, promissory notes, or other financial agreements or documents or conveyance instruments secured by the Property; (d) an environmental remediation scope of work detailing (1) how confirmation soil samples will be collected during the work and the elements for which they will be tested and (2) the plan for removing and properly disposing of any Underground Storage Tanks, if encountered during site remediation; (d) asbestos/lead testing results from the vacant building located on the Property; and (e) other documents, records and materials concerning the operation or physical condition of the Property, including, without limitation, all surveys, maps, plans, soils reports and environmental site assessments in Seller's possession and control.

6.2. Entry. Without limiting any other rights of Buyer under this Agreement, as of the Effective Date, Buyer and Buyer's agents and employees shall have the right to enter the Property to conduct soils, engineering, environmental and other tests, inspections, surveys and investigations at the Property ("Investigations") at Buyer's sole expense. Seller agrees to cooperate with any Investigations made by or at Buyer's direction. The exercise by Buyer of any of the preceding rights or any other act of Buyer shall not negate any representation, warranty or covenant of Seller, or modify any of Buyer's rights or Seller's obligations in the event of any breach by Seller of any of its representations, warranties or covenants under this Agreement. To the extent permitted by applicable law, Buyer shall indemnify and hold Seller harmless

from any and all damages, expenses, liens or claims (including attorneys' fees) arising from Buyer's exercise of its rights under this Subsection 6.2 or failure to pay third parties, and the provisions of this indemnity shall survive termination of this Agreement.

6.3. Period for Investigations. Closing of this transaction is conditioned on Buyer's satisfaction with the Property, the suitability of the Property for Buyer's intended uses and the feasibility of this transaction in Buyer's sole and absolute discretion. Buyer shall have until August 23, 2021 to conduct its Investigations and to review the items delivered by Seller pursuant to Subsection 6.1 above (the "Contingency Period"). If Buyer fails to notify Seller and the Escrow Holder in writing that this condition is satisfied or waived prior to 5:00 p.m. Pacific Time on the final day of the Contingency Period, then this Agreement shall be deemed terminated, and both Seller and Buyer shall be released and discharged from all further obligations under this Agreement except for those obligations that expressly survive Closing. The Deposit, plus interest, shall be returned to Buyer and, except as provided in Subsection 6.2, neither party shall be subject to a claim by the other for damages of any kind with respect to this Agreement or Buyer's attempt to purchase the Property.

7. Seller's Obligations. From the Effective Date until the Closing Date, Seller shall, at its sole expense:

7.1. Promptly notify Buyer upon learning of any fact or event that would make any of the representations or warranties of Seller contained in this Agreement or any Buyer's Conditions Precedent untrue or misleading in any material respect or that would cause Seller to be in violation of any of its covenants or other obligations hereunder.

7.2. Notify Buyer promptly upon receiving notice of a claim or pending litigation affecting the Property, or notice of any event, transaction, or occurrence before Closing that would materially adversely affect the Property or any part thereof.

7.3. Not convey, mortgage, grant a deed of trust, or contract to do the foregoing or otherwise allow or consent to convey, abandon, relinquish, cloud or encumber title to the Property or any interest therein or part thereof without Buyer's consent.

7.4. Maintain the Property in good order, condition and repair, and otherwise operate the Property and maintain its business records in the same manner as before the making of this Agreement, the same as though Seller were retaining the Property.

7.5. Maintain all casualty, liability and hazard insurance currently in force with respect to the Property through Closing without diminution in coverage.

7.6. Remedy any violations of law or municipal ordinances or regulations of any federal, state, local or other governmental departments of which Seller is aware.

7.7. Take no action that will adversely affect title to the Property nor take action that impairs the issuance of the Title Policy as described in Section 4 of this Agreement.

7.8. Notify Buyer of each event of which Seller becomes aware affecting the Property or any part thereof immediately upon learning of the occurrence of such event.

8. Deliveries to Escrow Holder.

8.1. By Seller. Seller shall deliver or cause to be delivered to Escrow Holder on or prior to the Closing Date the following items, the delivery of each of which shall be a condition to the performance by Buyer of its obligations under this Agreement:

(a) Deed. A statutory warranty deed, duly executed and acknowledged by Seller (the “Deed”), conveying to Buyer fee simple title to the Property, subject only to the Permitted Exceptions.

(b) FIRPTA Affidavit. A certificate evidencing that Seller is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code.

(c) ALTA Affidavits. Any affidavits, certifications or instruments, including any lien affidavits or mechanic’s lien indemnifications, duly executed and acknowledged by Seller, as reasonably may be required by the Title Company in order to issue the Title Policy.

(d) Closing Certificates. A certificate of Seller dated as of the Closing Date certifying that all of Seller’s representations and warranties remain true as of the Closing Date, or if not, specifying the respect in which any representation or warranty is no longer true.

(e) Certificates of Authority. Such certificates as are necessary or required by Buyer or the Title Company to evidence the authority of Seller and its signatories to execute the instruments to be executed by Seller in connection with this transaction, and evidence that the execution of such instruments has been properly authorized by Seller.

(f) Excise Tax Affidavit. A real estate excise tax affidavit signed by Seller.

(g) Such other instruments or documents as may be reasonably required by the Title Company, or pursuant to the provisions of this Agreement, or as mutually agreed by Seller and Buyer to be necessary to fully consummate the transaction contemplated hereby.

8.2. By Buyer. Buyer shall deliver or cause to be delivered to Escrow Holder on or prior to the Closing Date the following items:

(a) Purchase Price. Buyer shall deliver or cause to be delivered to Escrow Holder on or before the Closing Date cash by federal funds, wire transfer or cashier’s check in the amount necessary to pay the balance of the Purchase Price and Buyer’s share of closing costs and prorations.

(b) Excise Tax Affidavit. A real estate excise tax affidavit signed by Buyer.

(c) Such other instruments or documents as may be reasonably required by the Title Company, or pursuant to the provisions of this Agreement, or as mutually agreed by Seller and Buyer to be necessary to fully consummate the transaction contemplated hereby.

9. Close of Escrow.

9.1. Time. Closing shall occur in the office of Escrow Holder on a date mutually agreeable to Buyer and Seller after Buyer's Conditions Precedent have been satisfied or waived, but in any event no later than August 31, 2021, unless further extended by written agreement or unless accelerated by written agreement if the Parties conclude an earlier Closing is possible. As used in this Agreement, "Closing," "Closing Date" or "Date of Closing" means the date on which all appropriate documents are recorded, and proceeds of sale are available for disbursement to Seller in accordance with this Agreement. Funds held in reserve accounts pursuant to escrow instructions shall be deemed, for purposes of the definition of "Closing," "Closing Date" and "Date of Closing," as available for disbursement to Seller.

9.2. Closing Costs and Prorations.

(a) Closing Costs. Buyer and Seller shall each pay its own attorneys' fees. Buyer shall pay the cost of recording the Deed, escrow fees, the title insurance premium charged by the Title Company for Buyer's Title Policy and the endorsements required by Buyer, and the cost of any survey required by the Title Company (if any). Seller's monetary liens on the Property, if not previously discharged, shall be discharged in full out of the Purchase Price at Closing. Seller shall pay real estate excise tax, if any is due.

(b) Prorations. Seller shall be responsible for paying real property taxes, general assessments, surface water management fees and other fees (if any) payable to governmental entities, utilities and operating expenses relating to the Property through the Closing Date. If Seller is entitled to a reimbursement for overpayment of real property taxes, it shall be Seller's responsibility to seek such reimbursement from the appropriate taxing authority outside of Closing. Seller shall provide evidence satisfactory to Buyer that accounts for utility services to the Property, including but not limited to electricity, heating oil (if applicable), natural gas (if applicable), solid waste, water, sewer, telephone, internet service, and cable, are current and there are no delinquent charges owing. Seller shall pay any special assessments against the Property in existence as of the Closing Date through the Closing Date. All expenses of the Property, including but not limited to, real property taxes, surface water management fees and other fees (if any) payable to governmental entities, rents, utility charges, amounts payable under contracts that Buyer elects to accept or assume, annual permits and other expenses normal to ownership, use, operation and maintenance of the Property shall be prorated as of 11:59 p.m. on the Closing Date.

9.3. Procedure. Escrow Holder shall close escrow as follows:

(a) Obtain the release of the Property from any liens described in the Commitment, and delivery of all documents by Seller, and in this Agreement except the Permitted Exceptions;

(b) Confirm with Buyer satisfactory evidence of delivery of all documents by Seller;

(c) Confirm with Seller satisfactory evidence of delivery of all documents by Buyer;

(d) Pay applicable real estate transfer excise taxes and record the Deed;

- (e) Complete the prorations and credits;
- (f) Issue and deliver the Title Policy to Buyer;
- (g) Deliver any other documents deposited by Seller with Escrow Holder to Buyer;
- (h) Deliver the Purchase Price less Seller's closing costs and prorations and Buyer credits, if any, to Seller; and
- (i) Forward to Buyer and Seller, in duplicate, a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited with Escrow Holder, with such recording and filing date endorsed thereon.

9.4. Incorporation of Escrow Instructions. This Agreement shall serve as escrow instructions, and an executed copy of this Agreement shall be deposited by Buyer with Escrow Holder following its execution. The parties may execute additional escrow instructions provided that such additional escrow instructions shall not change the terms of this Agreement.

9.5. Possession. Possession of the Property shall be delivered to Buyer upon Closing.

9.6. Deliveries Outside of Escrow. On the Closing Date Seller shall deliver to Buyer outside of escrow all original books and records of account, contracts, leases and leasing correspondence, receipts for deposits, unpaid bills and other papers pertaining to the Property, architectural and engineering plans, drawings and specifications for the improvements to the Property, all "As-Built" plans and specifications, original operating permits and certificates relating to use, occupancy or operation of the Property, all advertising materials, booklets, keys and other items, if any, used in Seller's operation of the Property.

10. Brokerage Commission. Seller warrants to Buyer and Buyer warrants to Seller that each party's sole contact with the other and with the Property regarding this transaction has been directly with the other party and has not involved any broker or finder. Seller and Buyer further warrant to each other that no broker or finder can properly claim a right to a commission or finder's fee based upon contacts between the claimant and that party with respect to the other party or the Property. To the extent permitted by applicable law, each party shall indemnify, defend and hold the other party harmless from and against any loss, cost or expense, including, but not limited to, attorneys' fees and court costs, resulting from any claim for a fee or commission by any broker or finder in connection with the Property and this Agreement resulting from the indemnifying party's actions.

11. Condemnation. If there is a condemnation (by an entity other than Buyer) of all or part of the Property initiated before Closing, Seller shall promptly notify Buyer and Buyer shall have the option for ten (10) days following the date the notice is received (a) to proceed with the Closing, in which event all condemnation proceeds already received by Seller by the Closing shall be paid to Buyer and the right to receive such proceeds not yet received by Seller shall be assigned to Buyer at the Closing, or (b) to terminate this Agreement. Unless this Agreement is terminated, Seller shall take no action with respect to any condemnation proceeding without the prior written consent of Buyer. Buyer shall take no action to initiate a condemnation proceeding for all or any portion of the Property.

12. Representations, Warranties and Covenants.

12.1. Seller's Representations and Warranties. In addition to the representations, warranties and covenants contained elsewhere in this Agreement, Seller, as of the Effective Date and as of the Closing Date, makes the following representations, warranties and covenants:

- (a) Title. Seller is the sole owner of the Property.
- (b) Agreements to Transfer or Encumber. Seller has not committed nor obligated itself in any manner whatsoever to sell or encumber the Property or any interest therein to any party other than Buyer, nor committed or obligated to lease all or any portion of the Property.
- (c) Compliance with Law. To the best of Seller's knowledge, the property complies in all material respects (both condition and use) with all applicable statutes, ordinances, codes, rules and regulations of any governmental authority having jurisdiction over the Property (including those related to zoning, building, subdivision, engineering, and Environmental or Safety Laws) that remains uncured.
- (d) Bankruptcy, Etc. No bankruptcy, insolvency, rearrangement or similar action involving Seller or the Property, whether voluntary or involuntary, is pending, threatened, by a third party, or contemplated by Seller.
- (e) Litigation. There is no pending or to Seller's best knowledge threatened in writing, judicial, non-judicial foreclosure, or municipal or administrative proceedings with respect to this transaction or in any manner affecting the Property or any portion thereof or in which Seller is or will be a party by reason of Seller's ownership of the Property.
- (f) Notices. Seller have not received any written notices from any insurance companies, governmental agencies or from any other parties with respect to any violations or other matters concerning the Property.
- (g) Taxes and Assessments. Other than amounts disclosed by the Commitment, to the best of Sellers' knowledge, no other property taxes have been or will be assessed against the Property for the current tax year, and there are no general or special assessments or charges that have been levied, assessed or imposed on or against the Property.
- (h) Tax Returns. Seller has filed all local, state and federal tax forms that are required to be filed by Seller, have paid all taxes due and payable by Seller to date and will pay all such taxes that become due and payable by Seller prior to the Closing.
- (i) Underground Storage Tanks; Hazardous Substances. To the best of Seller' knowledge, (i) there are no cisterns, wells, subterranean storage or underground storage tanks on the Property, (ii) no underground storage tanks have been removed from the Property, (iii) there are no Hazardous Substances currently located in, on, or under the Property in a manner or quantity that presently violates any Environmental or Safety Law, and (iv) there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of Hazardous Substances or the violation of Environmental or Safety Laws at the Property.

(j) Violation of Property Restrictions. To the best of Seller' knowledge, the Property and the current use, occupation and condition thereof do not violate any applicable deed restrictions or other covenants, restrictions or agreements (including, without limitation, any of the Permitted Exceptions), site plan approvals, zoning or urban redevelopment plans applicable to the Property.

(k) Tax Valuation/Assessment. Seller has no knowledge and has not received any notice of: (a) proceedings pending for the correction of the assessed valuation of Real Property, or (b) any other pending or threatened special assessments affecting the Real Property.

(l) Authority. Seller has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Seller and constitute the Seller's legal, valid and binding obligation enforceable against Seller in accordance with its terms. The consummation by Seller of the sale of the Property is not in violation of or in conflict with nor does it constitute a default under any of the terms of any agreement or instrument to which Seller is or may be bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(n) No Omissions. All representations and warranties made by Seller in this Agreement, and all information contained in any certificate furnished by Seller to Buyer in connection with this transaction, are free from any untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained herein or therein not misleading. The copies of any documents furnished to Buyer in connection with this transaction are true and complete copies of the documents they purport to be.

(o) Leases, Service Contracts or Other Contracts. As of the Date of Closing, no leases, service contracts, or other contracts are in place regarding or related to the Property. As of the Date of Closing, no leases, service contracts, or other contracts will be in place regarding or related to the Property.

(p) Mechanic's Liens. No labor, material or services have been furnished in, on or about the Property or any part thereof that has not been paid in full prior to Closing.

12.2. Seller's Knowledge. Whenever the phrases "to Seller's knowledge" or "to the best of Seller's knowledge" or any similar phrase is used herein, those phrases mean the present, actual knowledge (as opposed to the imputed knowledge) of the fact or condition by Darin Granger ("Seller's Representative"). The representations and warranties contained in Section 12.1 are the representations and warranties of Seller, not Seller's Representative, and shall not create any individual liability for Seller's Representative.

12.3 Effect of Buyer's Inspections. The effect of the representations and warranties made by Seller in this Agreement shall not be diminished or deemed to be waived by any inspections, tests or investigations made by Buyer or its agents.

12.4 Survival Period. Subject to the provisions of Section 12.5, and notwithstanding anything else to the contrary contained in this Agreement, in any exhibits attached hereto, or in any

documents executed or to be executed at Closing or otherwise in connection herewith (collectively, the “Purchase Documents”), all of Seller's representations, warranties, covenants, undertakings, indemnities, and agreements contained in any of the Purchase Documents (collectively, “Seller's Undertakings”) shall survive the Closing for a period of six (6) months (the “Survival Period”). Buyer acknowledges that it is a sophisticated buyer who is familiar with the ownership and operation of real estate projects similar to the Property, and Buyer and Seller have negotiated and agreed upon the length of the Survival Period as an adequate period of time for Buyer to discover any and all facts that could give rise to a claim or cause of action for a breach of a representation.

12.5 Assumption of Liabilities. Buyer, by virtue of the purchase of the Property, will not be required to satisfy any obligation of Seller arising prior to the Closing Date. Other than such obligations so expressly assumed by Buyer or any liens or other obligations with respect to the Property that result from any action or activities by or on behalf of Buyer after the Closing Date, Seller, after the Date of Closing, will pay and discharge any and all liabilities of each and every kind arising out of or by virtue of the possession, ownership or use of the Property prior to the Closing Date, and shall indemnify, defend and hold Buyer harmless therefrom; provided that Seller’s obligation to indemnify, defend and hold Buyer harmless with respect to any Hazardous Substances or compliance with Environmental or Safety Laws shall be limited to Seller’s obligations set forth in Section 13.3.

12.6 Provide Further Information. From the Effective Date through the Closing Date, Seller will notify Buyer of each event of which Seller becomes aware affecting the Property or any part thereof promptly upon learning of the occurrence of such event.

13. Environmental Compliance. In addition to and without limiting any other representations, warranties, covenants and agreements in this Agreement, Seller represents, warrants, covenants and agrees:

13.1. Hazardous Substances. Except for petroleum products in connection with motor vehicles, lawn mowers, and underground storage tank for heating oil, Seller has not used or stored on, under or about the Property or transported to or from the Property any Hazardous Substance or allowed any other person or entity to do so. Seller has not, generated, manufactured, produced, stored, released, discharged or disposed of on, under, above or about the Property (or off-site of the Property that might affect the Property) or transported to or from the Property, any Hazardous Substance or allowed any other person or entity to do so. Seller has no knowledge nor has Seller observed any questionable practice or conduct indicating that any Hazardous Substance has been used, generated, manufactured, produced, stored, released, discharged or disposed of on, under or above Property (or off-site of the Property that might affect the Property) or transported to or from the Property by any entity, firm or person, or from any source whatsoever.

13.2. Pre-closing Covenant. Seller will not use, generate, manufacture, produce, store, release, discharge or dispose of on, under, above or about the Property (or off-site of the Property that might affect the Property), or transport to or from the Property, any Hazardous Substance or authorize any other person or entity to do so, prior to the Closing.

13.3. Environmental Indemnity. Seller shall protect, indemnify, hold harmless and defend Buyer and its directors, officers, contractors, employees, agents, parents, subsidiaries, successors and assigns from and against any and all loss, damage, cost, expense or liability (including attorneys' fees and costs) directly or indirectly arising out of or attributable to a breach of any representation, warranty, covenant or agreement contained in this Section 13 including, without limitation, (a) all consequential damages, and (b) the costs of any required or necessary repairs, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans. This indemnity does not apply to actions of Buyer, its agents or independent contractors.

13.4. Definitions. For the purpose of this Section 13, the following terms shall be defined as provided below unless the context clearly requires a different meaning:

(a) "Environmental or Safety Law" means the Federal Water Pollution Control Act, the Clean Air Act, the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Superfund Amendment and Reauthorization Act, the Toxic Substances Control Act ("TSCA"), the Occupational Safety and Health Act, the Hazardous Materials Transportation Act, the Hazardous Materials Transportation Uniform Safety Act, the Oil Pollution Act of 1990, the Washington Water Pollution Control Act, the Clean Air Washington Act, the Washington Hazardous Waste Management Act ("HWMA"), the Washington Model Toxics Control Act ("MTCA"), the Washington Industrial Safety and Health Act, the Washington Worker and Community Right to Know Act, and the Washington Oil and Hazardous Substance Spill Prevention and Response Act, together with all regulations promulgated under any such authority, and any and all other federal, state, regional, local or international statutes, regulations, rules, ordinances, orders, court or regulatory agency directives, permits, licenses, governmental authorizations and common law causes of action that apply to (1) any hazardous substance or material regulated or restricted under CERCLA, RCRA, TSCA, MTCA, or the HWMA; (2) any other pollutant, contaminant, or waste; (3) the health or safety of persons; or (4) the protection of the environment or land use. "Environmental or Safety Law" includes past and future amendments and supplements.

(b) "Hazardous Substances" means any hazardous, toxic, or dangerous substance, waste, or material that is regulated under any Environmental or Safety Law.

14. Intentionally Removed.

15. Survival. Subject to the limitations in Section 12.4, the covenants, agreements, representations and warranties made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof.

16. Entire Agreement. This Agreement contains the entire integrated agreement of the parties, including all of the covenants and conditions between the parties with respect to the subject matter of this Agreement, and supersedes all prior correspondence, agreements and understandings, both verbal and written. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by Seller and Buyer. The parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the parties.

17. Default; Remedies, Specific Performance.

17.1 Seller Default. This Agreement pertains to the conveyance of real property, the unique nature of which is hereby acknowledged by the parties. Consequently, if Seller breaches or defaults under this Agreement or any of the representations, warranties, terms, covenants, conditions or provisions hereof, Buyer shall have, in addition to a claim for damages for such breach or default, and in addition and without prejudice to any other right or remedy available under this Agreement or at law or in equity, the right (a) to specific performance of this Agreement; or (b) to terminate this Agreement upon written notice without liability to Seller.

17.2 Buyer Default. If Buyer fails to perform its obligations pursuant to this Agreement at or prior to Closing for any reason except (a) failure of any condition precedent to Buyer's obligations to Close or (b) failure by Seller to perform its obligations hereunder, then Seller, as its sole and exclusive remedy, may terminate this Agreement and receive the Deposit as liquidated damages and not as penalty, in full satisfaction of claims against Buyer hereunder (except for claims arising under Section 5). Seller and Buyer agree that Seller's damages resulting from Buyer's default are difficult, if not impossible, to determine, and the Deposit is a fair estimate of those damages and has been agreed to in an effort to cause the amount of damages to be certain.

18. Notices. All written notices required to be given pursuant to the terms hereof shall be either delivered personally; deposited in the United States mail, certified mail, return receipt requested, postage prepaid and addressed to the addresses listed below with copies to the parties listed after such address (if any) sent by facsimile transmission to the numbers below or sent by electronic transmission to the email address below, with receipt acknowledged:

SELLER:

Darin Granger
Blueprint Capital Services, LLC
PO Box 16309
Seattle, WA 98116
Facsimile: N/A Telephone: (206) 459-1980
Email: darin@blueprintcap.com

BUYER:

Seattle Parks and Recreation
300 Elliott Avenue W., Suite 100
Seattle, WA 98121
Attn: Lise Ward
Facsimile: (206) 233-7038 Telephone: (206) 733-9106
Email: lise.ward@seattle.gov

The foregoing addresses may be changed by written notice to the other party as provided herein. Mailed notice properly given shall be deemed received two (2) days after deposit in the mail. Facsimile transmission, with receipt confirmed by the recipient by telephone, or email transmission with receipt confirmed by email, of any signed original document or notice, and retransmission of any signed facsimile or email transmission, shall be the same as personal delivery of an original. At the request of either party, or the Escrow Holder, the parties will confirm facsimile or email transmitted signatures by signing an original document.

19. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

20. Waivers. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

21. Construction. Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if one of the parties had prepared it, but rather as if both parties had prepared it. If the date on which Buyer or Seller are required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

22. Time. Time is of the essence of every provision of this Agreement.

23. Force Majeure. Performance by Seller or Buyer of their obligations under this Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the party who is obligated to render performance (but excluding financial inability to perform, however caused).

24. Successors. The terms, conditions and covenants contained in this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

25. Applicable Law. This Agreement shall be interpreted and governed by the laws of the State of Washington. The venue of any legal action or claim related to this Agreement shall be in the Superior Court for King County.

26. No Third Party Beneficiary. The parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the parties, and therefore, nothing in this Agreement express or implied shall confer upon any person any right or interest whatsoever, other than directly to the parties and their heirs, executors, personal representatives, successors and assigns.

27. Reservation of Rights and Responsibilities. Except as set forth in this Agreement, Buyer and Seller retain all rights, privileges, obligations and remedies as set forth under applicable federal, state or local laws.

28. Entire Agreement. This Agreement (a) constitutes the sole and only agreement of the parties hereto with respect to the subject matter hereof (b) supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter hereof, and (c) cannot be changed except by their written consent.

29. Counterparts. The parties may execute this Agreement in one or more identical counterparts, all of which when taken together will constitute one and the same instrument. A facsimile or electronic mail transmission shall be binding on the party or parties whose signatures appear thereon. If so executed, each counterpart is to be deemed an original for all purposes, and all counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart.

30. No Recording of Agreement. Neither party (nor any of their respective agents or representatives) shall record this Agreement (or any memorandum or short form of this Agreement) without the prior written consent of the other.

31. Incorporation of Exhibits. All exhibits hereto and all other documents and instruments referred to herein or in any exhibit or attachments hereto are incorporated by reference as a part of this Agreement. The Exhibit List to this Agreement shall be as follows:

- Exhibit A Legal Description of Property
- Exhibit B: Map of property
- Exhibit C Permitted Exceptions

Signatures of the Parties to this Agreement are on the following pages.

Exhibit A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF KING, STATE OF WA, AND IS DESCRIBED AS FOLLOWS:

LOTS 3 AND 4 AND LOTS 17 AND 18 IN BLOCK 44, C.D. HILLMAN'S PLAT OF RAINIER BOULEVARD GARDEN ADDITION

TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN [VOLUME 12 OF PLATS, PAGE 65](#), IN KING COUNTY, WASHINGTON.

Exhibit B

MAP

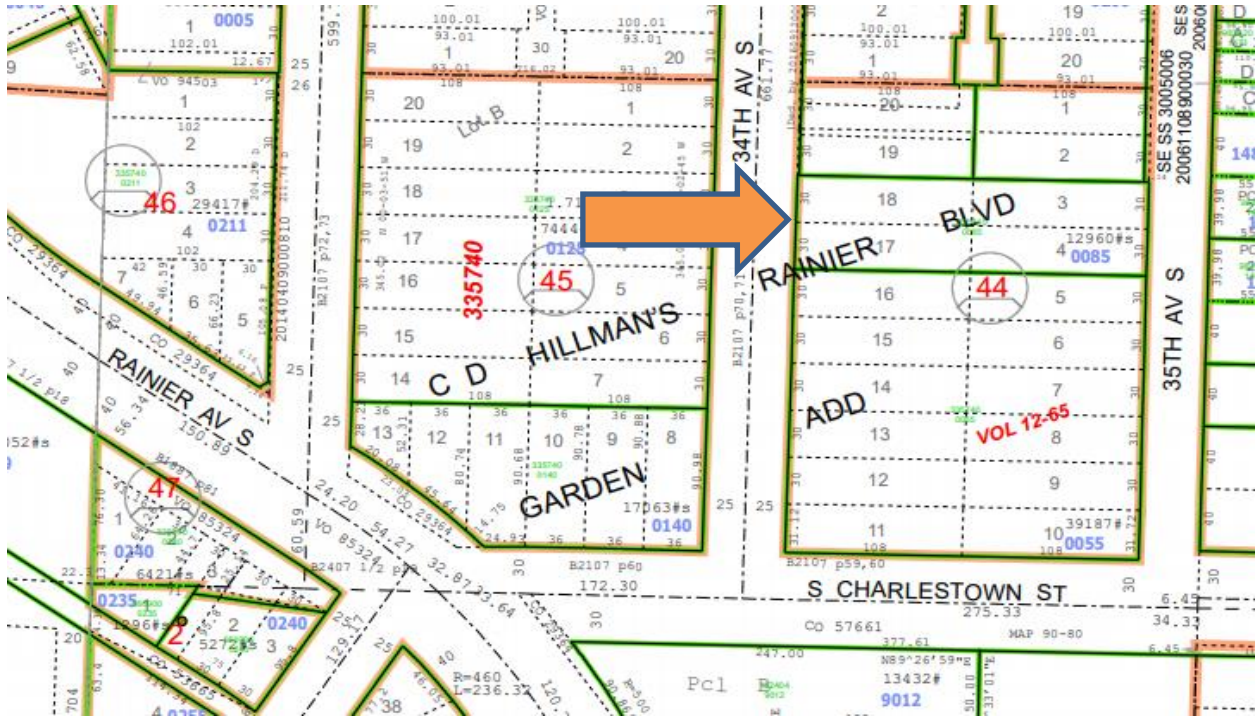


Exhibit C

PERMITTED EXCEPTIONS – First American Title Co. Order No. 4209-3560776

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I-Requirements are met.
2. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records.
3. Any facts, rights, interests, or claims which are not shown by the Public Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
4. Easements, claims of easement or encumbrances which are not shown by the Public Records.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the Public Records.
6. (A) Unpatented mining claims; (B) Reservations or exceptions in patents or in Acts authorizing the issuance thereof; (C) Water rights, claims or title to water; whether or not the matters excepted under (A), (B) or (C) are shown by the Public Records; (D) Indian Tribal Codes or Regulations, Indian Treaty or Aboriginal Rights, including easements or equitable servitudes.
7. Any lien, or right to a lien, for services, labor or materials or medical assistance heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
8. Any service, installation, connection, maintenance, construction, tap or reimbursement charges/costs for sewer, water, garbage or electricity.
10. Special District charges for the year 2021, after the date of closing.

Tax Account No.: 335740008503

1st Half

Amount Billed: \$ 8,629.75

Amount Paid: \$0.00

Amount Due: \$

Assessed Land Value: \$ 1,620,000

Assessed Improvement Value: \$ 1,000

2nd Half

Amount Billed: \$ 8,629.75

Amount Paid: \$ 0.00

Amount Due: \$

Assessed Land Value: \$ 1,620,000

Assessed Improvement Value: \$ 1,000

16. Any and all offers of dedication, conditions, restrictions, easements, boundary discrepancies or encroachments, notes and/or provisions shown or disclosed by Short Plat or Plat of C.D. Hillman's Plat of Rainier Boulevard Garden Addition to the City of Seattle recorded in [Volume 12 of Plats, Page\(s\) 65](#).

ACCEPTANCE

On behalf of the City of Seattle, a municipal corporation of the State of Washington, I, Jesús Aguirre, Superintendent of Seattle Parks and Recreation, accept the interest in real property conveyed herein by this Statutory Warranty Deed, legally described in the Statutory Warranty Deed, from Blueprint Capital Services LLC, to the City of Seattle, pursuant to the authority conferred by Ordinance _____.

Dated: _____

THE CITY OF SEATTLE

Jesús Aguirre
Superintendent
Seattle Parks and Recreation

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Parks and Recreation	Max Jacobs/684-8018	Anna Hurst/733-9317

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to Seattle Parks and Recreation (SPR); authorizing the acquisition of real property commonly known as 3638 34th Avenue South; authorizing acceptance of a recording of the deed for open space, park, and recreation purposes; and ratifying and confirming certain prior acts.

Summary and background of the Legislation: SPR has assembled and land-banked almost an acre of property in the North Rainier Hub Urban Village since 2011, to meet the goal of providing a large park to a growing community experiencing service gaps. These gaps are defined as 1) insufficient parks within a 5- to 10-minute walking distance and, more importantly, 2) insufficient parks in an area experiencing among the highest occurrence levels in the city of obesity, diabetes, and lack of physical activity, based on socio-economic data correlated with health data. This park site is nestled within a series of affordable family and senior multi-family housing projects developed over several years by Southeast Effective Development, whose focus is to improve the quality of life in Southeast Seattle by creating partnerships and inspiring investments in housing, arts, and economic development – with a special focus on residents with fewer opportunities and resources.

Currently, there is a privately-owned parcel between the park and a multi-family senior housing project on the north end of the block. Community members participating in SPR’s public design process suggested the City consider acquiring this site to improve the size and utility of the park and to create a transition between the park and the senior housing to the north that would facilitate access to the park. Currently occupied by a vacant warehouse, this parcel was recently placed under contract to a townhouse developer. The developer is willing to sell the property to the City – and even demolish the existing obsolete building and export some contaminated soil in order to deliver a vacant site to SPR. If not purchased now, the park will lose the ability to create an important connection and add park elements that could help reverse the urban village’s negative health statistics.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? ___ Yes X No

- 2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle’s resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.**

The City will work with community on site planning and conceptual design for the potential expansion of the North Rainier land-banked site in ways that advance their priorities for multi-generational recreation uses of the site that advance health equity.

- g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program’s desired goal(s)?**

Not applicable.

List attachments/exhibits below:

Summary Exhibit A – Site Map

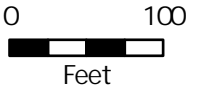


N Rainier
 Land-banked
 Site Addition

3638 34th Ave S

Legend

- Parcel Add on
- Park Boundary
- Parcel Boundary



1 inch = 125 feet

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No warranties of any sort, including accuracy, fitness or merchantability accompany this product.

Map date:
Friday, June 18, 2021.

North Rainier Acquisition

City Council Public Assets and Native Communities Committee

August 3, 2021

Seattle Parks and Recreation



City of Seattle 138

Overview

- Seattle Parks and Recreation seeks to buy land adjacent to existing park property, significantly increasing its size
 - Existing park site: 39,187 square feet; ~0.9 acres
 - Acquisition site: 3638 34th Ave. S; 12,960 square feet; ~0.3 acres
 - Located in North Rainier Hub Urban Village
- Property otherwise slated for development (in for permits)



Background and Next Steps

- Property located between park and SouthEast Effective Development senior housing (to the north)
- Property appraised at \$1.62 million
- Seller has agreed to clean up contamination and demolish vacant buildings before selling to SPR
- Authorized acquisition amount: \$2 million
- SPR is pursuing King County Conservation Futures Tax (CFT) funding to support this acquisition



Questions?

