

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

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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:

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- 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.

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- 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.

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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