

John Bresnahan
SCL GCW and WG Shoreline Easement ORD ATT 1
April 10, 2015
#D1

Attachment 1

After recording, return to:

Ball Janik, LLP
Attn: Bradley S. Miller
101 SW Main Street, Suite 1100
Portland, OR 97204

EASEMENT AGREEMENT

SCL P.M. #: 260407-1-E011
Grantor: City of Seattle
Grantee: WG @ Shoreline, LLC/GCW Shoreline, LLC
Short Legal: Ptn. SW-NE, Sec. 7, Twp. 26N, R. 4E
Tax Parcel #: 0726049050

THIS EASEMENT AGREEMENT (“Easement”) is made this _____ day of _____, 2015, by and between THE CITY OF SEATTLE, a Washington municipal corporation, acting by and through its CITY LIGHT DEPARTMENT, hereinafter called the “Grantor;” and GCW SHORELINE, LLC, a Washington limited liability company, and WG @ SHORELINE, LLC, a Washington limited liability company, together hereinafter called the “Grantees.”

1. Conveyance and Consideration. Grantor, for and in consideration of the sum of Five Hundred Twenty-Five Thousand Dollars and no Cents (\$525,000.00), hereby grants, without warranty of title, to GCW Shoreline, LLC, an undivided three-quarters interest, and to WG @ Shoreline, LLC, an undivided one-quarter interest, as tenants in common, and their successors, a non-exclusive easement for the purposes of parking vehicles upon, as well as access over, through, and across, a portion of Grantor’s property (“Grantor Property”) that is legally described in **Exhibit “A”**. The area of the easement (“Easement Area”) is legally described in **Exhibit “B”** and depicted in **Exhibit “C”**. The Easement is appurtenant to and shall benefit Grantees’ Property as described on **Exhibit “D”** (“Grantees’ Property”). Exhibits A, B, C, and D are attached hereto and incorporated herein by this reference.

2. Rights of Others. The Easement Area and Easement herein granted are subject to the prior rights of others, as now exist, or as may be granted by the Grantor to the successors or assigns of those holding such rights; these rights include, but are not limited to: a) a Temporary Permit held

by Key Bank of Washington, effective December 15, 1983, granting them access through and across the south 44.00 feet of the Easement Area, as measured perpendicular to “Line X” as described in Exhibit “B” hereto; and b) a Memorandum of Agreement between Grantor and the City of Shoreline dated August 9, 2001, authorizing the City of Shoreline to design, construct, operate, and maintain a multi-use trail (the Shoreline Interurban Trail) over, through, and across the entire Easement Area. Grantees are responsible for verifying that their use of the Easement Area will not abridge the prior rights of others.

3. Grantor’s Reserved Rights. Grantor reserves unto itself and its assigns: (i) all aerial rights above, over, across and through the Easement Area; (ii) all subsurface rights beneath, across and through the Easement Area; (iii) the right to enter, exit, and traverse the Easement Area for the purpose of replacing, repairing, improving, removing, operating and maintaining its present or future facilities or structures lying within, suspended above, or located on Grantor Property; (iv) the right to install transmission or distribution poles, pole support structures, wires, insulators, crossarms, braces, fiber optic equipment, and any other necessary or convenient related appurtenances anywhere within the Easement Area, along with the right to enter, exit and traverse the Easement Area for such installation; and (v) all other rights as fee owner of the Grantor Property and Easement Area that do not unreasonably interfere with the Grantees rights pursuant to this Easement.

If Grantor anticipates the need to temporarily use the Easement Area for construction, maintenance, repair, or safety purposes, Grantor shall make reasonable efforts to notify one or both Grantees in advance. However, in cases of emergency, no such advance notification shall be required. Grantees shall at no time interfere with Grantor’s access to, egress from, or ability to traverse the Easement Area or Grantor Property or allow such interference by their agents, lessees or assigns.

4. Additional Terms and Conditions. Grantees and their respective successors, agents, and assigns, hereby agree to the following additional terms and conditions:

4.1 No building, structure, stormwater retention or detention pond or vault, open water course, bioswale, infiltration field, water feature, fountain, or fire hazard will be constructed, placed or allowed to remain within the Easement Area.

4.2 Not fewer than ninety (90) days prior to commencing construction of any material improvement to the surface of the Easement Area, including, but not limited to: paving, curbing, fencing, landscaping, or lighting, Grantees shall provide detailed plans to Grantor for Grantor’s review and approval.

4.3 Upon completion of any construction described in 4.2 above, Grantees shall remove and dispose of all debris and shall provide Grantor with final as-built plans of any improvement(s) made within the Easement Area.

4.4 A minimum of 30 feet of vertical clearance between any transmission conductor and the finished grade of any proposed improvement shall be maintained at all times. A minimum working clearance of 20 feet from 115 kV lines shall be maintained at all times for personnel and machinery. Grantees, their agents, employees, subcontractors, lessees and assigns shall comply with all National Electric Safety Code (NESC), Washington Department of Labor and Industries, and federal Occupational Safety and Health Administration codes and clearances while engaging in any activity within the Easement Area.

4.5 Grantees shall be responsible for maintenance of vegetation within the Easement Area, if any. Grantees shall not plant or place vegetation within the Easement Area that has a height at maturity of greater than twelve (12) feet. Grantor reserves the right to trim, cut, or remove any vegetation greater than twelve (12) feet within the Easement Area.

4.6 No vehicles, trailers, cranes, construction equipment or any other such equipment with a height or potential height of over 25 feet shall be driven, pulled, pushed, operated or parked within the Easement Area. No boats, trailers, or recreational vehicles shall be parked in the Easement Area for more than 24 hours.

4.7 No blasting or discharge of any explosives shall be permitted within 150 feet of Grantor's facilities.

4.8 There shall be no storage, dumping, burying or transferring any hazardous substances, inoperable vehicles, chemicals, oils, fuels, flammable materials ("Hazardous Substances") or containers for said substances, within the Easement Area; provided that nothing herein shall prohibit the passage of vehicles containing or transporting Hazardous Substances across the Easement Area coincident to the ordinary and safe operation of said vehicles on Grantees' Property. Grantees, their successors, agents, lessees, and assigns shall comply with all environmental laws of the State of Washington or any other governmental subdivision or agency having regulatory authority over Grantor Property with respect to its use of the Easement Area.

4.9 Grantees, their successors and assigns, assume all risk of loss, damage or injury which may result from its use of the Easement Area, or the use of the Easement Area by its respective agents, employees, invitees, contractors, subcontractors, permittees or licensees. Grantees, their successors, and assigns agree to indemnify and hold harmless Grantor from all claims, actions, or damages of every kind and description, which may accrue

from or be suffered by reason of Grantees', their successors', respective agents', employees', invitees', contractors', subcontractors', permittees', licensees', lessees' or sublessees' use of or presence in the Easement Area, the performance of any work in connection with its use, or the exercise of any rights granted in this Easement; and in case of any such suit or action being brought against Grantor, or damages arising out of or by reason of any of the above causes, Grantees shall, upon notice of commencement of such action, defend Grantor at Grantees' sole cost and expense and will fully satisfy any judgment after the said suit shall have been finally determined, if adversely, to Grantor, except to the extent of the sole negligence of the Grantor, its agents, or representatives.

4.10 Without limiting Grantees' obligations pursuant to Paragraph 4.10 of this Easement, Grantees shall indemnify and defend Grantor from any claims, damages, or liabilities arising directly or indirectly from Hazardous Substances that are released or discharged by Grantees, their successors, or their respective agents, employees, invitees, contractors, subcontractors, permittees, licensees, lessees, or sublessees related to their operations, use of or presence in the Easement Area, the performance of any work in connection with use of the Easement Area, or the exercise of any right granted by this Easement. The term "Hazardous Substances" includes all substances that are regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Solid Waste Disposal Act (SWDA) as amended by the Resource Conservation and Recovery Act (RCRA), The Toxic Substances Control Act (TSCA), and the Washington State Model Toxics Control Act (MTCA). The term "claims" related to released or discharged Hazardous Substances includes any claim that may be brought and any order that may be issued pursuant to one of the statutes listed above and associated regulations, and claims based upon common law causes of action for trespass, negligence, nuisance or other common law theories, claims for lost property value, claims for business losses, and claims for personal injuries arising from or related to Hazardous Substances.

4.11 Grantees shall at all times exercise their rights under this Easement in accordance with the requirements of all applicable statutes, orders, rules and regulations of any public authority having jurisdiction.

4.12 This Easement and all its covenants, terms and conditions shall become perpetual and run with Grantor Property. Upon conveyance of the fee simple interest of Grantees' property, the successor in interest shall automatically be deemed to have assumed all obligations and liabilities arising out of or in connection with this Easement, and the predecessor released therefrom, except for actions arising from sections 4.9 or 4.10 above.

4.13 The obligation(s) of the Grantees to the Grantor under this Easement are joint and several, and may not be waived or apportioned except by written consent of Grantor.

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4.14 The Easement granted herein represents an indivisible easement interest in the Grantor Property and shall not be assigned by either or both Grantees without the express written consent of Grantor, which shall not be unreasonably withheld.

5. Termination of Prior Ground Lease Agreement. By this agreement, the parties agree that that certain Ground Lease Agreement between Grantor and Grantees effective May 16, 2007, and subsequently recorded as a Memorandum of Ground Lease under King County recording number 20081027000893, will terminate on the effective date of this Easement.

6. Effective Date. This Easement shall become effective and binding upon execution by both parties hereto and recording of this Easement.

IN WITNESS WHEREOF, this instrument has been executed the day and year first above written.

Dated this _____ day of _____, 2015

GRANTOR:

CITY OF SEATTLE, a Washington municipal corporation
by and through its
CITY LIGHT DEPARTMENT

By: _____

Printed Name: _____

Title: _____

(signatures and notarizations continue on following page)

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GRANTEE:

GCW SHORELINE, LLC, a Washington limited liability company
Acknowledged and accepted as to all conditions herein

By: _____

Printed Name: _____

Title: _____

Date: _____

GRANTEE:

WG @ SHORELINE, LLC, a Washington limited liability company
Acknowledged and accepted as to all conditions herein

By: _____

Printed Name: _____

Title: _____

Date: _____

(notarizations continue on following page)

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STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2015, before me personally appeared _____, to me known to be the _____ of GCW SHORELINE, LLC, the Washington limited liability company that executed the within and foregoing instrument, and acknowledged that said instrument was the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that _____ was authorized to execute said instrument on behalf of GCW SHORELINE, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Signature: _____

Print name: _____

Notary Public in and for the State of Washington

Residing at: _____

My commission expires: _____

(notary seal)

(notarizations continue on following page)

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STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2015, before me personally appeared _____, to me known to be the _____ of WG @ SHORELINE, LLC, the Washington limited liability company that executed the within and foregoing instrument, and acknowledged that said instrument was the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that _____ was authorized to execute said instrument on behalf of WG @ SHORELINE, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Signature: _____

Print name: _____

Notary Public in and for the State of Washington

Residing at: _____

My commission expires: _____

(notary seal)