

Record Date:10/12/2023 3:06 PM

Electronically Recorded King County, WA

Ex 1 Property Use and Development Agreement  
V1

*When Recorded, Return to:*  
McCullough Hill PLLC  
Attn: Katie Kendall  
701 5<sup>th</sup> Avenue, Suite 6600  
Seattle, WA 98104

**PROPERTY USE AND DEVELOPMENT AGREEMENT**

<b>Grantors:</b>	Trinity Trailside, LLC, a Washington limited liability company; and Trailside SH Holdings, LLC, a Delaware limited liability company
<input type="checkbox"/> Additional on page	
<b>Grantee:</b>	City of Seattle
<input type="checkbox"/> Additional on page	
<b>Legal Description (abbreviated):</b>	Ptn N 1/2 SE 1/4 SW 1/4 9-25N-4E, and ptn vacated NE 48th Street, King County.
<input checked="" type="checkbox"/> Additional on:	Exhibit A
<b>Assessor's Tax Parcel ID #:</b>	092504-9395, 092504-9396, 092504-9398
<b>Reference Nos. of Documents Released or Assigned:</b>	N/A

**I AM REQUESTING AN EMERGENCY NONSTANDARD RECORDING FOR AN ADDITIONAL FEE AS PROVIDED IN RCW 36.18.010.**

**I UNDERSTAND THAT THE RECORDING PROCESSING REQUIREMENTS MAY COVER UP OR OTHERWISE OBSCURE SOME PART OF THE TEXT OF THE ORIGINAL DOCUMENT.**

Karin C. Savage, Paralegal  
1

## PROPERTY USE AND DEVELOPMENT AGREEMENT

THIS AGREEMENT is executed this date in favor of the City of Seattle, a municipal corporation (“City”), by Trinity Trailside, LLC (“Owner”) and Trailside SH Holdings, LLC (“Trailside”) (collectively, “Declarant”).

WHEREAS, Owner is vested in fee simple title and/or has a substantial beneficial interest in the real property situated in King County, Washington, described as set forth on Exhibit A attached hereto (herein called the “Property”); and

WHEREAS, Trailside, the ground lessee of Owner’s Property, has constructed apartment buildings on the Property, together with accessory parking and other facilities, as the same may be hereafter amended, modified, revised or replaced (the “Project”); and

WHEREAS, Declarant filed petition C.F. 314380 for the vacation of a portion of NE 48<sup>th</sup> Street lying between 24<sup>th</sup> Avenue NE and the Burke Gilman Trail in the City of Seattle (the “Street”), which petition was considered under Chapter 35.79 of the Revised Code of Washington and Chapter 15.62 of the Seattle Municipal Code; and

WHEREAS, on May 21, 2019 the Transportation Committee of the Seattle City Council held a public hearing on the vacation petition; and

WHEREAS, on May 28, 2019, the Seattle City Council granted approval of the vacation petition subject to conditions; and

WHEREAS, Declarant proposes to provide public benefits that include among other things construction of a trail connection to the Burke Gilman Trail and restoration of landscaping along the Burke Gilman Trail, which will be constructed partially located on property owned by Seattle Public Utilities (“SPU”) and property owned by Seattle Department of Parks and Recreation (“Parks”); and

WHEREAS, SPU issued Permit Agreement No. **15-803** to Trailside for the construction and maintenance of a trail connection path from the Burke Gilman Trail to 24th Ave NE that crosses property owned by SPU; and

WHEREAS, Parks issued a Revocable Use Permit No. 2020-20 to Trailside for site preparation, construction, and maintenance of a trail connection path and trail amenities from the Burke Gilman Trail to 24th Ave NE that crosses property owned by Parks; and

WHEREAS, Trailside completed development activity authorized under the street vacation approval; and

WHEREAS, Declarant is executing this Property Use and Development Agreement (the "Agreement" or "PUDA") to ensure compliance with any on-going conditions of the vacation approval subsequent to passage of the vacation ordinance; and

NOW, THEREFORE, the Declarant covenants, bargains, and agrees on behalf of themselves, their successors, and assigns as follows:

Section 1. The conditions passed by the City Council on May 28, 2019 specified the following conditions of approval:

- A. The vacation is granted to allow the Petitioner to build a project substantially in conformity with the project presented to the City Council and for no other purpose.
- B. All street improvements shall be designed to City standards, as modified by these conditions to implement the Public Benefit requirements, and be reviewed and approved by the Seattle Department of Transportation through a Street Improvement Permit, including:
  - Curbless street improvements on 24<sup>th</sup> Avenue NE, and
  - Enhanced intersection treatments at NE 47<sup>th</sup> Street.
- C. The trail connection to the Burke Gilman Trail shall require a Property Use and Development Agreement (PUDA), public access easement agreement, SPU permit, or other binding mechanism to define the design, use, maintenance, programming and other obligations related to the trail connections and right-of-way improvements. The agreement(s) shall ensure that the trail connection remains open and accessible to the public unless relocated or replaced. The agreement between the Petitioner and SPU shall be completed before a Certificate of Occupancy is issued for the project. The enhanced trail connection shall also require a permit from the Parks Department that shall also be obtained before a Certificate of Occupancy is issued. SPU has agreed to provide for a trail connection across SPU property subject to the terms being developed as a condition of the vacation, but SPU is not obligated to accommodate other public benefit features such as benches or other features unless SPU issues a separate permit for any additional elements. The SPU permit agreement should:
  - Be recorded in order to place future property owners or successors on notice and bind them to permanent construction, access, maintenance, monitoring, and management obligations for the portion of the trail connection on SPU property;
  - Establish terms for payment of adequate and fair compensation to SPU for Petitioner's and its successors' use of SPU property for the trail connection;
  - Require the Petitioner and its successors to indemnify and hold harmless the City for any claim, damages, and attorney's fees arising from any individual use of the

trail connection, and any claim that the trail connection has been improperly constructed or maintained;

- Require that the Petitioner and its successors construct the trail connection to accepted standards and maintain the trail connection in as good condition as when initially completed;
- Require insurance in a form and amount acceptable to the City's Risk Manager covering the City for any claims or damages arising from any claim that the trail connector has been improperly constructed or maintained;
- Provide that the permit shall not be revoked without both SPU's and SDOT's consent in recognition of the trail connection as a public benefit condition of the vacation; and
- Include provisions for continuous and unrestricted access for maintenance, repair, protection, and monitoring of the SPU facilities and for future upgrades.

D. The utility issues shall be resolved to the full satisfaction of the affected utility prior to the approval of the final vacation ordinance. Prior to the commencement of any development activity on the site, the Petitioner shall work with the affected utilities and provide for the protection of the utility facilities. This may include easements, restrictive covenants, relocation agreements, or acquisition of the utilities, which shall be at the sole expense of the Petitioner. The impacted utilities include:

- Seattle City Light (SCL), and
- Seattle Public Utilities (SPU).

E. It is expected that development activity will commence within approximately 18 months of this approval and that development activity will be completed within 5 years. In order to ensure timely compliance with the conditions imposed by the City Council, the Petitioner shall provide the Seattle Department of Transportation with regular Reports, following Council approval of the vacation, providing an update on the development activity, schedule, and progress on meeting the conditions. The Petitioner shall not request or be issued a Final Certificate of Occupancy (C of O) until SDOT has determined that all conditions have been satisfied and all fees have been paid as applicable.

F. In addition to the conditions imposed through the vacation process, the project, as it proceeds through the permitting process, is subject to SEPA review and to conditioning pursuant to various City codes and through regulatory review processes including SEPA.

G. Free speech activities such as hand billing, signature gathering, and holding signs, all without obstructing access to the space, the building, or other adjacent amenity features,

and without unreasonably interfering with the enjoyment of the space by others, shall be allowed within the onsite vacation public benefit features. While engaged in allowed activities, members of the public may not be asked to leave for any reason other than conduct that unreasonably interferes with the enjoyment of the space by others.

- H. Signage clearly identifying public access and allowed free speech activities is required at the public open space elements and shall require the review and approval of SDOT Street Vacations. Signage shall be consistent with signage provided for public amenity spaces. Any violation of these condition will be enforced through Chapter 15.90 of the Seattle Municipal Code.
- I. The Petitioner shall develop and maintain the public benefit elements as defined by the City Council. A Property Use and Development Agreement (PUDA) or other binding mechanism shall be required to ensure that the public benefit elements remain open and accessible to the public and to outline future maintenance obligations of the improvements.
- J. Signage clearly identifying public access is required at the public open space elements and shall require the review of SDOT Street Vacations. The final design of the public benefit elements shall require the review and approval of SDOT Street Vacations. The public benefit requirements include the following features including approximate square footage dimensions, shall be described in the PUDA:

Public Benefit	Description	Approx. Value	Code Req'd
<b>1 – Enhanced Burke-Gilman Trail Connection (including 47<sup>th</sup> Ave ROW enhancements)</b>	<i>Burke-Gilman Trail connection within property (3,040 SF)                      4 fixtures pedestrian-scale lighting                      1 bollard</i>	<b>\$300,000</b>	<b>No</b>
<b>2 – Enhanced ROW improvements (24<sup>th</sup> Ave NE and NE 47<sup>th</sup> St)</b>	<i>24th Ave NE:                      Surfacing to SDOT curbless street standards (17,000 SF)                      Additional Planting (525 SF)                      7 additional street trees                      2 additional street light                      NE 47th ROW enhancements (north side) for bikes/peds between NE 24th St and NE 25th St:                      Sidewalk (3,000 SF)                      Planting area (630 SF)                      5 Street Trees</i>	<b>\$350,000</b>	<b>Minimal 24th Ave NE Frontage Improvements</b>
<b>3 – Burke-Gilman Amenities – SPU and SPR Property</b>	<i>Concrete surfacing at amenity and trail (2,075 SF)                      2 benches                      1 water fountain/fill station                      1 bike fix-it station                      75 feet split-rail fencing                      1 trash and 1 recycling receptacle                      1 fixture- pedestrian scale lighting                      Striping and traffic control markings</i>	<b>\$130,000</b>	<b>No</b>

<b>4 – Burke-Gilman Trail Landscape Restoration</b>	<i>New native landscape plantings in SPR property (approx. 4,900 SF)</i> <i>New native landscape plantings in SPU property (approx. 7,600 SF)</i> <i>Maintenance agreement</i>	<b>\$15,000</b>	<b>No</b>
<b>5 – Wayfinding</b>	<i>4-6 wayfinding signs</i> <i>1 information kiosk</i>	<b>\$18,000</b>	<b>No</b>
<b>Total Value</b>		<b>\$813,000</b>	

**Section 2.** The development project currently on-site, as implemented by Master Use Permit No. 3027132-LU, building permit 6725231-PH, and SIP No. 350041 has constructed the “Public Benefits” outlined in Section 1 in the following manner, and as depicted in **Exhibit B**. The following Public Benefits, as constructed, are acceptable to the City:

- A. The Enhanced Burke Gilman Trail was constructed as described in Section 1 and depicted in **Exhibit B**.
- B. The Enhanced ROW improvements on 24<sup>th</sup> Avenue NE was constructed as described in Section 1 and depicted in **Exhibit B**.
- C. The Burke Gilman Amenities were constructed and installed as described in Section 1 and depicted in **Exhibit B**.
- D. The Burke Gilman Trail Restoration was conducted as described in Section 1 and **Exhibit B**.
- E. Two wayfinding signs (Two Area signs) were installed and one wayfinding Nudge Sign is fabricated and awaiting installation pending completion of adjacent construction. SDOT no longer desires additional wayfinding signs.

**Section 3.** The replacement of any of the Public Benefits shall be of similar quality in design and materials as the original. Significant changes to the streetscape or the required Public Benefits shall require prior approval by the Seattle Department of Transportation, and Parks and SPU if the change involves Parks Property or SPU Property. Modified features shall maintain a substantially similar quality and character to the existing required design features.

**Section 4.** The trail connection, as a public benefit, is intended for recreational use by the general public to travel to and from the street to the Burke Gilman Trail and shall remain open and accessible to the public at all times unless relocated or replaced.

**Section 5.** The City, through Parks and SPU, issued permits, attached as **Exhibits C1 and C2** respectively, allowing Declarant limited and nonexclusive permission to use City property for the installation, use, access, and maintenance of a concrete public access path that connects to the Burke Gilman Trail, utilities beneath the public access path that serves the public amenities along the Buke Gilman Trail and completion of native landscape improvements, as

shown in **Exhibit B**. Declarant acknowledges and agrees that the permits are revocable by City and subject to City requirements, including for the SPU and Parks permit, an annual term for the permit subject to payment by Declarant of an annual fee. City acknowledges that Parks and SPU permits issued pursuant to this PUDA will only be revoked through interdepartmental concurrence of the permit-issuing Department and SDOT.

**Section 6.** Declarant will be responsible for maintaining and repairing the trail connection and public amenities installed by Declarant on its property, SPU Property, and Parks Property, at its own expense. This shall include monitoring and curing hazardous public safety conditions. Declarant shall be responsible for maintaining native landscape improvements until the planting shown in **Exhibit B** is fully established. After that the Declarant shall be responsible for maintaining the landscaping on the SPU and Parks Property. If the Declarant fails to maintain the trail connection and public amenities under this agreement, the City shall, through the jurisdictional department shall complete the required maintenance and bill the Declarant for maintenance charges, including materials, worker hours and administration.

**Section 7.** Declarant will allow continuous and unrestricted access to Parks and SPU for maintenance, repair, protection, and monitoring of its facilities on Parks Property and SPU Property and for future upgrades. If SPU or Parks damages the trail connection or public amenities installed by Declarant, Declarant agrees that it will reconstruct any improvements installed by Declarant unless the damage to the improvements is proved to be by the negligence of SPU or Parks.

**Section 8.** Declarant's use of the Parks Property and SPU Property is required to provide a public benefit and is nonexclusive and limited to the explicit approved uses in the permits issued by Parks and SPU and attached as **Exhibit C1** and **Exhibit C2** respectively. Any change to approved uses must be approved by SPU for uses on SPU Property pursuant to an SPU Permit Agreement and Parks for uses on Parks Property pursuant to a Revocable Use Permit.

**Section 9.** Declarant shall have the reasonable right to temporarily close, obstruct, limit access, or establish temporary hours of public access to the Public Benefits areas for: (1) construction, provided that any removed or permanently closed areas shall be replaced by Declarant to the satisfaction of the City before the area is removed or permanently closed; (2) maintenance and repair; (3) emergent and other circumstances beyond Declarant's control; or (4) as Declarant reasonably deems necessary to comply with any applicable law, regulation or order.

**Section 10.** Declarant may adopt reasonable rules and regulations regarding the use of and access to the Public Benefits. The rules and regulations shall be consistent with this Agreement. A summary of the current rules and regulations, if rules are adopted, shall be posted in several visible locations.

**Section 11.** Upon the effective date of the Agreement, Declarant shall provide and thereafter maintain in full force and effect, commercial general liability insurance providing for a limit of not less than \$1,000,000 per occurrence for damages arising out of bodily injuries or



death. The insurance policies obtained shall be issued by companies authorized to conduct business in Washington State and shall name the City as an additional insured. The Declarant shall provide evidence of insurance to the City Risk Manager at the City's reasonable request.

**Section 12.** In recognition that the trail connection is a public benefit, the right for the Declarant to use the SPU Property and Parks Property pursuant to the SPU and Parks permits attached as Exhibit C shall not be revoked without the mutual consent of SPU, Parks, and SDOT. If either the SPU or Parks permit is revoked without cause, the Declarant's obligation to provide or maintain the trail connection as a public benefit as to that revoked permit area is terminated until the revoked permit is reinstated or a new permit is issued.

**Section 13.** Declarant shall release, defend, indemnify and hold harmless the City and its officials, employees, agents, licensees, contractors, consultants and representatives (collectively, the "Indemnitees") from and against any and all claims, liens, demands, actions, costs, losses, expenses, harm, damages, and liability of any kind or character (collectively, "Claims"), including any damage or injury to any person or property, asserted or arising from, on account of, caused by, or in any way related to: (i) Declarant's exercise of its rights or obligations under this Permit Agreement, (ii) the acts or omissions of Declarant or Declarant's employees, agents, consultants, contractors, representatives, or licensees in or upon the Property, or (iii) the existence of, damage to, or failure of any of Declarant's improvements both on and off the Property; provided, however, nothing herein shall require Declarant to so indemnify and hold harmless the Indemnitees from Claims arising out of any damage or injury to any person or property to the extent caused by or resulting from the Indemnitees' negligence.

**Section 14.** Trailside acknowledges that, under a separate agreement with the Owner, it is responsible for all Declarant obligations in this PUDA. If Trailside fails to complete the Declarant obligations, Owner is jointly and severally responsible for completing all Declarant obligations under this Agreement.

**Section 15.** This Agreement may be amended or modified by agreement between the Declarant and the City, provided the amended Agreements shall be subject to approval by the City Council by ordinance.

**Section 16.** Notwithstanding the covenants contained in this Agreement, nothing in this Agreement shall constitute a public dedication of any portion of the Property.

**Section 17.** The legal description of the Property is included in **Exhibit A** to this Agreement, which is incorporated herein by this reference. An executed copy of this Agreement shall be recorded in the records of King County and the PUDA covenants shall attach to and run with the Property.


**Section 18.** This Agreement is made for the benefit of the City and the public. The City may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

**Section 19.** This Agreement shall be binding on Declarant’s successors and assigns. Owner, Trailside, and each future owner and ground lessee of the Property shall be bound to this Agreement only during the period of its ownership or leasehold interest.

**Section 20. Severability.** If any covenant, condition, or restriction in this instrument or any portion is invalidated or voided, the invalidity or voidness shall in no way affect any other covenant, condition, or restriction herein contained.

Dated this 28<sup>th</sup> day of June, 2023.

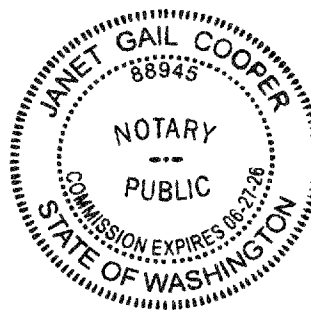
Trinity Trailside, LLC


  
James B. Rose  
Managing Member

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

On this day personally appeared before me **James B. Rose**, to me known to be the **Managing Member of Trinity Trailside, LLC, a Washington limited liability company**, the company that executed the within and foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute said instrument on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 28<sup>th</sup> day of June, ~~2020~~ 2023.



  
Janet G Cooper  
(print or type name)

NOTARY PUBLIC in and for the State of Washington, residing at Seattle  
My Commission expires: 06-27-2026



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

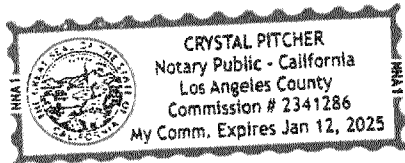
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Los Angeles }  
On Aug 12 - 2023 before me, Crystal Pitcher, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Benjamin E. Green  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature Crystal Pitcher  
Signature of Notary Public

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian of Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

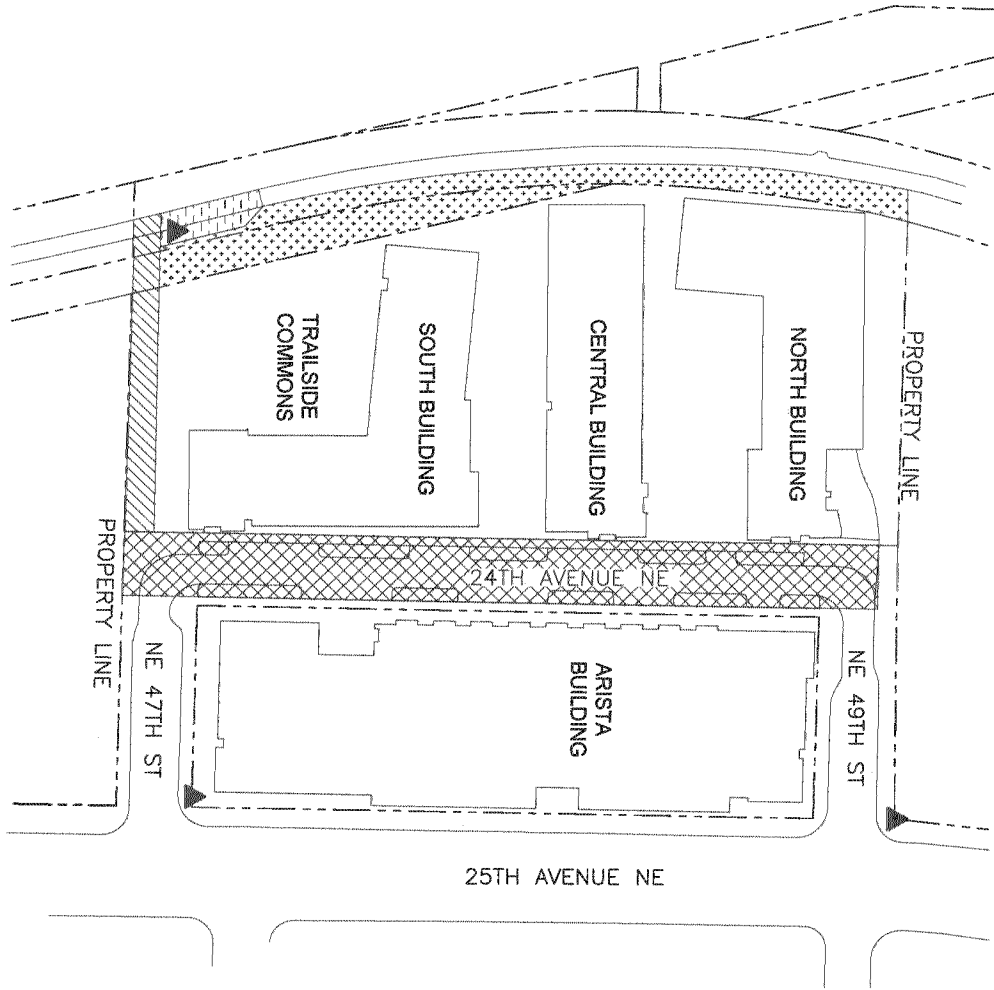
Trustee  Guardian of Conservator






Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_



# EXHIBIT B



-  Enhanced Burke-Gilman Trail Connection  
(including 47th Ave ROW enhancements)
-  Enhanced ROW improvements (24th Ave  
NE and NE 47th St)
-  Burke-Gilman Amenities - SPU and  
SPR Property
-  Burke-Gilman Trail Landscape Restoration
-  Wayfinding

# EXHIBIT C-1

# SEATTLE PARKS AND RECREATION REVOCABLE USE PERMIT CITY OF SEATTLE

SEATTLE PARKS AND RECREATION (SPR)  
300 Elliott Ave W., Suite 100  
Seattle, Washington 98119

## Continuous Use Revocable Use Permit Renewed Annually

Permit No. 2022-85

**NAME OF PERMITTEE:** Trailside SH Holdings, LLC  
**ADDRESS:** 5950 Sherry Lane, Ste 320  
Dallas, TX 75225  
**CONTACT(S):** Preston Hart  
O: 214-880-0350 C: 214-378-1902

**LOCATION OF PERMIT ACTIVITY:** A portion of the Burke Gilman Trail, specifically adjacent to the trail's south intersection of NE 47<sup>th</sup> Street and bordering the south line of the Permittees property as depicted on **Attachments B and C. This Permit is for property under the jurisdiction of Seattle Parks and Recreation (SPR)**

PERMISSION IS HEREBY GRANTED TO THE ABOVE-NAMED PERMITTEE TO:  
Occupy SPR property, specifically a portion of the Burke Gilman Trail, **Attachment B**. The permitted area is depicted on **Attachments B and C. The Permittee** will maintain a trail connector pathway from the Trail across SPR Property to the private parcel # 0925049395 developed by Trailside SH Holdings, LLC. Plans and conditions contained within the Street Vacation Public Use and Development Agreement, under Master Use Plan (MUP # 3027312-LU) have been reviewed in SPR's Proview Meeting, held April 2019. This permit is renewable on an annual basis.

### Attachments

CONDITIONS Attachment - A	AERIAL MAP PERMIT AREA Attachment - C
TRAIL CONNECTOR / MAINTENANCE DETAILS -Attachment B	ANNUAL INSURANCE CERTIFICATE AND INDEMNITY AGREEMENT Attachment - D

### For Official Use Only

Application Fee \$200.00 Received Invoiced 8/17/2023  
Permit ANNUAL FEE: N/A (See Section 2) WAIVED  
Inspection and Review Fee(s) \_\_\_\_\_ (See Section 2) Received \_\_\_\_\_  
PERMIT STATUS: \_\_\_\_\_ Issued \_\_\_\_\_ Denied \_\_\_\_\_ Date: \_\_\_\_\_ Initials: \_\_\_\_\_

  
Benjamin E. Green (Aug 18, 2023 13:22 PDT)

08/18/2023

Permittee's Name and Title	Signature	Date
 Jeffrey Bishop (Sep 18, 2023 13:12 PDT)		09/18/2023
Superintendent or Designee		Date

### Disclaimer:

This Permit is wholly of a temporary nature, vests no permanent rights to holder whatsoever is granted to Permittee only and cannot be transferred. This Permit is subject to revocation by the Department of Parks and Recreation upon thirty (30) days written notice mailed to Permittee at the address shown above.



ATTACHMENT A - CONDITIONS

Permit No. 2022-85

**PERMIT PURPOSE – MAINTENANCE AGREEMENT**

**This permit is for the continual use and maintenance of a Connector Trail on SPR property which is part of a Public Use and Development Agreement (PUDA) proposed for the vacation of a portion of NE 48<sup>th</sup> St.:**

- I. Under Permit # 2020-20 the Permittee, Trailside SH Holdings, LLC has completed site improvements of a trail connection path from the Burke Gilman Trail to 24<sup>th</sup> Ave NE. The improvements of the connector path will be publicly accessible SPR property to complete a planned trail connection project as approved by Seattle Design Construction and Inspection Department MUP # 3027312-LU and building permit # 6624484-CN along the eastern boundary of the Burke Gilman Trail, which is SPR property, for the installation of a public trail that extends from the Burke Gilman Trail and will provide public ingress / egress to 24th Ave NE. depicted on Attachments B and C.; Access to the work site will be from Permittee’s private property and the public right-of way. This is associated with the vacation of 48th Street between 24th Ave NE and the Burke Gilman Trail.
- II. This Permit will administrate and allow the continual use of Permittees improvements on park property including continued use and maintenance, replacement, or repair of improvements of the trail connector which is part of a Property Use and Development Agreement (PUDA) which is a public benefit identified for the vacation of a portion of NE 48<sup>th</sup> Street in favor of the Permittee.
- III. Amenities include (approximately 2,160 square feet concrete surface, three benches, one drinking fountain, one bike fix-it station, one trash and one recycle receptacle container, wayfinding signs, a pedestrian scale lighting fixture and 60 linear feet of split rail fencing), striping and traffic control markings and approximately 12,530 square feet of native landscape restoration.
- IV. Maintenance of Amenities and features of the Trail Connector are the responsibility of Trailside SH Holdings, LLC and their successors and assigned.
- V. Maintenance will be to SPR Standards, using best practices and guidelines.

**Permittee must notify the SPR Department Central East District Crew at 206-684- 4958 and the SPR Work line at 206-684-7250 not less than 48 hours (two working days) prior to work within the maintenance area.**

The Maintenance Area is a portion of SPR property, specifically 2,160 square feet of the Burke Gilman Trail as depicted on **Attachments B and C**, made a part of this permit by reference.

**1. PERMIT PERIOD**

Permit is effective, as of date of December 1, 2021, and is renewable annually each year, starting December 1, 2023, and until revoked. Trail Connection amenities, services, or utilities such as water, electrical, and drainage will be maintained by Trailside SH Holdings at its sole expense. Site furnishing associated with the Burke Gilman Trail Connector including benches, informational signs, signage, lighting, irrigation, and fencing are a part of the improvements made by Trailside SH Holdings, LLC.

**2. PERMIT FEE / OTHER APPLICABLE FEES**

Conditions above accepted by: \_\_\_\_\_



08/18/2023

Permittee: Initial and Date

**ATTACHMENT A - CONDITIONS**

**Permit No. 2022-85**

The initial application fee for this permit is \$200.00. It is anticipated that this permit will be renewed annually if the permit’s conditions are met. The prevailing fee schedule is established by ordinance at the beginning of the year.

The permit fee(s) effective December 2022 is based on the published fees, reasonably calculated by the Department, to pay SPR staff time for the administration, inspection, and review of the easement area and improvements associated with this permit.

Applicant will pay the current per hour inspection fee for SPR staff time for an annual site inspection. The current fee schedule for SPR staff time is listed in the following table. Each year, the permittee is potentially subject to the following permit fee(s), listed in the table below. The Department will use reasonable discretion to allocate SPR Staff time for permit review and inspection.

<b>SPR Staff</b>	<b>Rate</b>	<b>Hours</b>	<b>Cost</b>
Onsite Inspection	\$200		
Real Property Agent	\$130		
Surveyor	\$130		
Engineer	\$130		
Landscape Architect	\$130		
Arborist	\$130		
Environmental Analyst	\$130		
Other	\$130		
<b>TOTAL STAFF CHARGES</b>			

In addition to the annual site inspection, any modification proposed by the permittee within the easement area is subject to SPR staff review and review fee(s) and must be reviewed by the Department’s Subject Expert.

**3. RESTORATION UPON REVOCATION**

Permittee must remove all construction debris and equipment from SPR property immediately after removal of improvements. Hard surfaces, furniture and amenities must be removed in their entirety and restored to the property’s pre-installation condition, or better.

**4. INSPECTIONS**

Permit issuance includes one (1) on-site inspection. In accordance with the prevailing fee schedule, as established by ordinance, additional on-site inspection charges are \$200 per hour with a one-hour minimal fee for each inspection. Inspection of the worksite for this project will be necessary under this permit and billed to the Permittee within 30 days after each occurrence.

**An annual inspection of the trail connector by a SPR Inspector will be completed upon annual review of fees. Any changes or improvements within the easement area will require SPR staff review and approval.**

**5. OTHER PERMITS / APPROVALS / REGULATIONS**

Permittee, its (sub)contractors or agents, must obtain all necessary permits and approvals required by applicable State and City laws, ordinances, rules, and regulations to perform any work on SPR property,

Conditions above accepted by:

*BA*  
BC

08/18/2023

Permittee: Initial and Date

**ATTACHMENT A - CONDITIONS**

**Permit No. 2022-85**

including an additional Revocable Use Permit for changes made within the trail connector area  
Permittee is responsible for locating and avoiding damage to any existing improvements on the site.  
**Permittee and Seattle Public Utilities (SPU) have a separate permit for SPU property, # 15-403.**

**6. INDEMNIFICATION**

Permittee and it's assigns hereby agrees to indemnify, defend, and hold the City harmless from any and all losses, claims, actions, costs, damages and expenses (including reasonable attorney's fees) arising out of or resulting from the acts, errors or omissions of Permittee, its agents, contractors or employees in connection with any activities authorized by this permit, but only to the extent such losses, claims, actions, costs, damages or expenses are caused by the negligence or intentional acts of Permittee, its authorized agents, contractors or employees as contained within the PUDA.

**7. INSURANCE / LIABILITY**

Permittee shall maintain, at no cost to the City, during the Permit Period, Commercial General Liability (CGL) and Automobile Liability insurance with minimum limits of \$1,000,000 each occurrence combined single

limit bodily injury and property damage. CGL and Automobile liability insurance shall include "The City of Seattle" as an additional insured for primary and non-contributory limits of liability with the CGL insurance policy including an ISO CG 20 12 additional insured endorsement or its equivalent designated or blanket additional insured policy provision.

The insurance policy for the Trail Connection and improvements shall be reviewed annually by The City of Seattle, Finance and Administrative Services Risk Management Department for evaluation of coverage limits and needed updates which will be updated to current insurance coverage and costs.

Certification of Insurance, including an attached actual copy of the CGL additional insured policy provision, shall be issued to "The City of Seattle, c/o Department of Parks and Recreation, 300 Elliott Avenue West, Suite 100, Seattle, WA 98119" and approved by the City prior to the issuance of the Permit.

**8. PUBLIC SAFETY**

Permittee shall keep the Permit Area in a safe and usable condition and provide, when and if necessary, such safety and security measures as deemed appropriate to protect public safety, including, but not limited to, vehicle, bicycle or pedestrian barricades, fencing, flaggers, or other traffic controls including sufficient warning signs for same for trail users. When necessary, and to prevent access to the site by the public at times when the Permit Area is closed for maintenance. Permittee assumes full responsibility for the sufficiency of such measures. If an emergency should occur, Permittee shall notify Parks Property Management at (206) 615-0932 or, if after 5:00 pm. or on weekends, the Parks Duty Officer at (206) 915-6249 (cell phone) or (206) 982-4583. If the emergency involves pipe or water infrastructure the Permittee shall contact Seattle Public Utilities at (206) 386-1800.

**9. LIENS AND ENCUMBRANCES**

Permittee shall keep the premises free and clear of any liens and encumbrances arising out of the use or occupancy of the premises by Permittee. At the City's request, Permittee shall furnish City with written proof of payment of any item which, if not paid, would or might constitute the basis for such a lien on the premises.

**10. HAZARDOUS SUBSTANCES**

Conditions above accepted by: \_\_\_\_\_



08/18/2023

Page 4 of 10

Permittee: Initial and Date

**ATTACHMENT A - CONDITIONS**

**Permit No. 2022-85**

The Permittee shall be responsible for complying with all federal, state, and local laws and regulations in regard to the handling and disposing of hazardous substances that the Permittee brings onto or uses on park property. In no instance, shall the Permittee allow the release or disposal of hazardous substances on park property.

**11. BEST MANAGEMENT PRACTICES**

Permittee and Permittee's (sub)contractor(s) shall adhere to all best management practices and take such action as is necessary to protect public safety, SPR vegetation, minimize erosion, water run-off, and slide hazard within or adjacent to Permit Area. The Permittee will consult with SPR's Forrester regarding the protection of trees if necessary.

**All contracted work on SPR property must be completed by a licensed, insured, and bonded contractor with a business registered within the City of Seattle.**

**12. STANDARDS**

Permittee shall perform the requirements of this permit to the satisfaction of SPR according to reasonable and objective standards. Permittee, its (sub) contractor(s) or agents shall call SPR Property Management at (206)615-0932 for approval upon completion. All damage or injury done to the City facilities caused by Permittee's activity must be repaired to the City's satisfaction / standards, within 30 days of the completion of the work, at the sole expense of the Permittee.

**13. CAPTIONS**

The captions in this permit are inserted for convenience of reference and in no way define, describe, or limit the scope or intent of this permit or any of its provisions.

---

**End of Conditions**

Conditions above accepted by: \_\_\_\_\_

  
SA

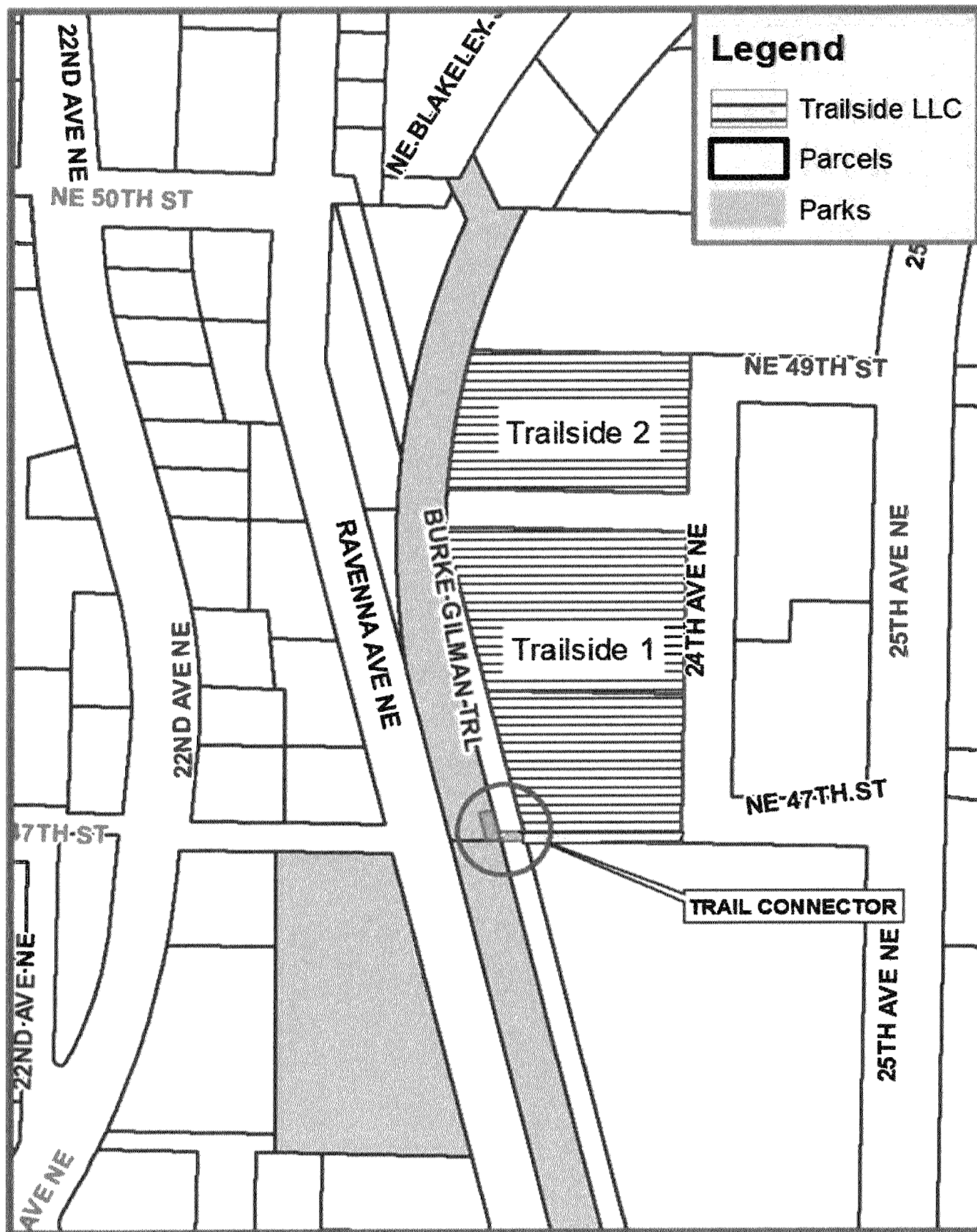
08/18/2023

Page 5 of 10

Permittee: Initial and Date

ATTACHMENT B – TRAIL CONNECTOR / MAINTENANCE DETAILS

Permit No. 2022-85



## ATTACHMENT B – TRAIL CONNECTOR / MAINTENANCE DETAILS

Permit No. 2022-85

### Public Benefit:

The public benefit amenities on SPR Property include Burke Gilman Trail amenities (approximately 2,160 square feet concrete surface, three benches, one drinking fountain, one bike fix-it station, one trash and one recycle receptacle container, wayfinding signs, and 60 linear feet of split rail fencing), and approximately 12,530 square feet of native landscape restoration are listed on the PUDA. The Connector Trail will provide public access to 25<sup>th</sup> Ave NE.

The Permittee is responsible for the maintenance of amenities under the PUDA, and this permit will allow the continuation of access and maintenance as scheduled or required.

### Ongoing Maintenance Obligations:

#### Overview:

- The maintenance guidelines pertain to the Seattle Parks & Recreation property situated along the Burke Gilman Trail. The area consists of native plants and hardscape. Installation was completed in August 2021. A permanent irrigation system was not installed, and the plants were hand watered to support establishment. No further supplemental irrigation is anticipated or necessary.
- The native planting area and hardscape elements within Parks property shall be maintained by the owner.
- Hardscape elements and features within Parks property include CIP concrete paving, railings, drinking fountain, drainage, water supply line, trash and recycling receptacles, benches, a wayfinding kiosk, a bike fixit station and cedar fencing.
- All litter and debris shall be removed within the planting area on each maintenance visit. Dead plant material will be removed excepting natural tree litter within planting areas (including leaves and conifer needles) will be left as mulch so long as plants are not buried, and plant health is maintained.
- Plant health, soil moisture and damage to plants and property will be monitored on each visit and take proactive action to correct any observed issues.

### Hardscape Maintenance Guidelines

**Furnishings:** Features and furnishings are made with high-quality materials and are designed to weather naturally. Furnishings will be maintained and kept in working order as required to serve their intent and function. If damage occurs, parts or units will be replaced as required with in-kind products. General wear will occur from normal use and aging. This wear will be monitored to determine when replacement of parts or units may be needed.

**Trash Removal and Cleaning:** Regular maintenance will include removal of trash and recycling bags from receptacles and replacement with new bags at a frequency required to prevent trash overflow or spillage. Litter will be picked up promptly and removed from the site. When furnishings or surfaces become soiled, cleaning will occur on an as-needed basis to maintain a safe and hygienic environment.

**Infrastructure Maintenance:** The drinking fountain, drainage structures, and fixit station will be assessed quarterly to confirm they are functioning properly, have not been vandalized, and if mechanical maintenance or repair is required.

**Paving Maintenance:** The heavy use of the Burke Gillman Trail limits the frequency with which maintenance of the surface is required to remove moss and mildew as other similar pathways. As warranted, paving surfaces will be pressure washed or brushed to maintain a safe surface for pedestrians and cyclists. Potholes, hazardous cracks and bumps, or other physical damage will be repaired promptly.

### Landscape Maintenance Guidelines

**Plant Nutrition:** In general, fertilizing should be implemented only when necessary to correct nutrient deficiencies in planter soil. When applicable, contractor should perform seasonal fertilization using a granular slow-release product. Spot fertilizing will occur on an as-needed basis.

**Weed Control:** Inspection for weeds should occur with each site visit. Contractor to use good faith efforts to maintain a

**ATTACHMENT B – TRAIL CONNECTOR / MAINTENANCE DETAILS**

**Permit No. 2022-85**

weed free condition within planting areas and remove weeds promptly.

**Plant Pest and Disease Control:** Organic and cultural methods are the first line of defense, with an emphasis on prevention and pro-active management. The last line of defense is chemical, applied by a State of Washington “certified” pesticide applicator only, with specific timing and limited use to target pests.

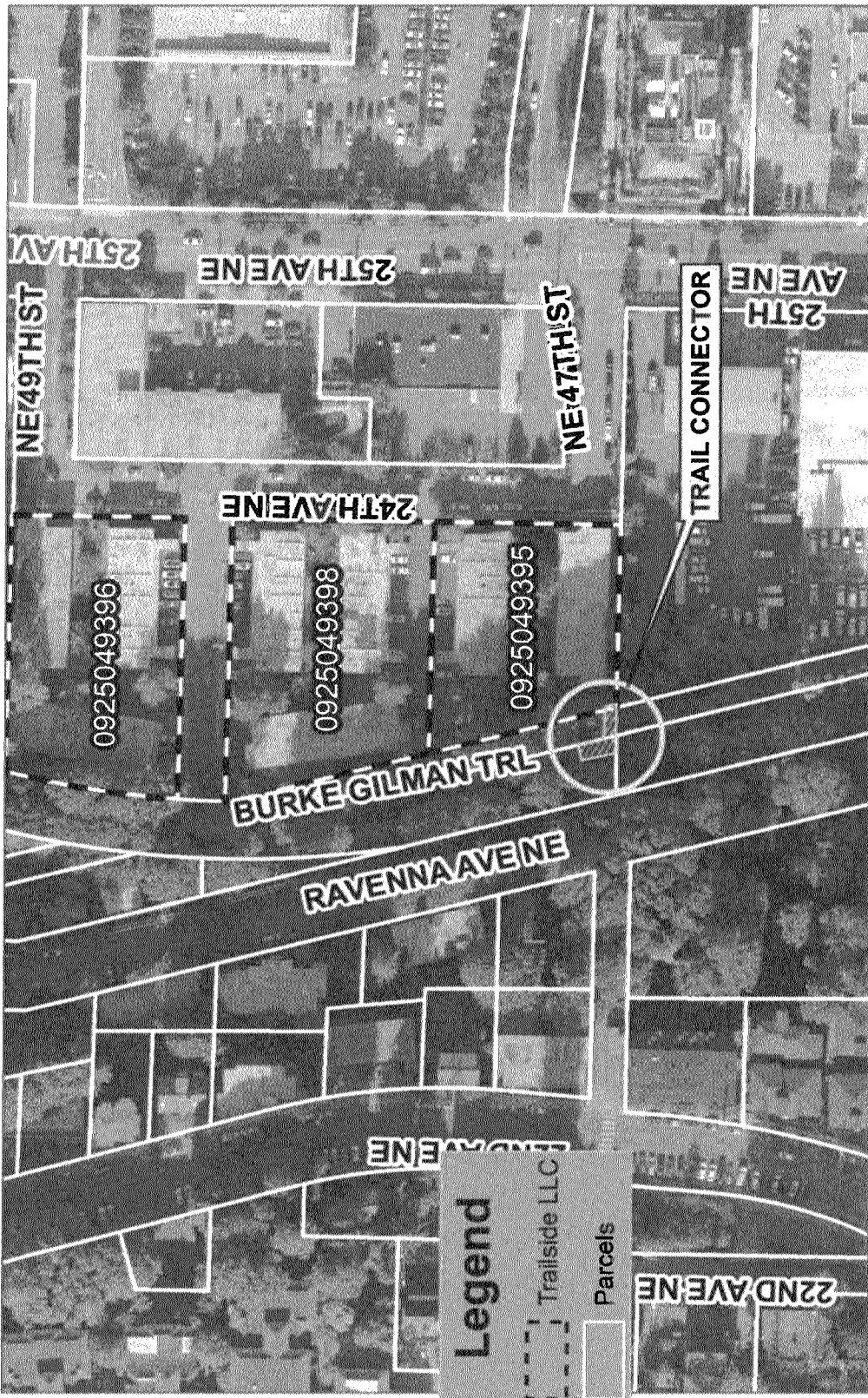
**Mulching & Tree Litter:** Mulch is intended to temporarily cover the soil while plants fill in densely enough to suppress weeds and cover bare soil. Mulch should be applied as necessary to keep soil always protected. Natural tree litter within planting areas, including leaves and conifer needles, as mulch is encouraged if plants are not buried, and plant health is maintained.

**Pruning, Cutting Back & Plant Removal:** Shrubs should typically not be pruned and should maintain their natural form, except as follows: selective pruning will include the removal of dead wood, diseased wood, and wood that is infected with insects, and excess sucker-shoots. Spent foliage should be gently combed from evergreen grasses and removed from the site. Do not prune evergreen grasses, sedges, and rushes. Deciduous grasses should be cut back to a height of 6 inches during late February.

ATTACHMENT C – PERMIT AERA AERIAL

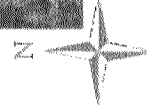
Permit No. 2022-85

# Trailside Apartments - Burke Gilman Trail Connector



**Legend**

- Trailside LLC
- Parcels




Created July 2023. THE CITY OF SEATTLE. All rights reserved. No warranties of any sort, including accuracy, fitness or merchantability, accompany this product. Coordinate System: State Plane, NAD83-94, Washington North Zone.



ATTACHMENT F – Public Use and Development Agreement  
 2022-85

Permit No.


Attachment D ANNUAL INSURANCE CERTIFICATE AND INDEMNITY AGREEMENT

 <b>CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 06/09/2023
		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).		
PRODUCER MARSH USA LLC. Attn: Anpe Barrios (Elsangela.N.Barrios@marsh.com) Ph: (617) 385-0363 / Fax: (617) 385-0344 99 High Street Boston, MA 02110 CNY01670857-BAR-25M-23-24 evd	CONTACT NAME: PHONE (A/C, H/S, Ext): FAX (A/C, Ext): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE	NAICS #
INSURED Trailside SH Holdings, LLC c/o Precision Hart 9859 Sherry Lane Suite 329 Dallas, TX 75225	INSURER A: Enurance Assurance Corporation INSURER B: N/A INSURER C: N/A INSURER D: INSURER E: INSURER F:	17551 N/A N/A

COVERAGES CERTIFICATE NUMBER: NYC-010927145-71 REVISION NUMBER: 3  
 THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSUR	TYPE OF INSURANCE	ADOL	ADOL	POLICY NO.	POLICY EFF	POLICY EXP	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> AGG. PER LOCATION <input checked="" type="checkbox"/> \$1M Deductible \$0 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER: AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	X		GGR70014696304	06/01/2023	06/01/2024	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ 1,000,000 MED EXP (Any one person) \$ EXCLUDED PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 4,300,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$ COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED. RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYER'S LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER MEMBER EXCLUDED? (Mandatory in WA) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE <input type="checkbox"/> WORKER'S COMP E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	TERRORISM COV INCLUD						

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Section, may be utilized if more space is required)  
 Project: Trailside 4801 24th Ave NE, Seattle, WA 4717 24th Ave NE, Seattle, WA 481701 24th Ave NE, Seattle, WA.  
 The City of Seattle, c/o Department of Parks and Recreation, 300 Elliott Avenue West, Ste 100 Seattle, WA 98119 as additional insured related to Seattle Parks and Recreation Reversible Use Permit # 2022-85

<b>CERTIFICATE HOLDER</b> (TRAILSIDE) The City of Seattle c/o Department of Parks and Recreation 300 Elliott Avenue West, Ste 100 Seattle, WA 98119	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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# EXHIBIT C-2

Recording Requested By And  
When Recorded Mail To:

City of Seattle SPU - WTR  
700 5th Ave, Suite 4900-RPS  
PO Box 34018  
Seattle WA 98124-4018

**CITY OF SEATTLE – SEATTLE PUBLIC UTILITIES  
TRAIL CONNECTOR CROSSING AND LANDSCAPING MAINTENANCE  
PERMIT AGREEMENT**

Reference #s of Document Released or Assigned:	None
Grantor.....	The City of Seattle, Seattle Public Utilities
Grantee.....	Trailside SH Holdings, LLC, a Delaware limited liability company, and Trinity Trailside, LLC, a Washington limited liability company
Legal Description (abbreviated).....	Portion of The City of Seattle 24-FT Pipeline Right of Way as condemned by ORD NO 56125 over & across SE QTR of SW QTR in STR 09-25-04
Assessor’s Tax Parcel ID#: .....	Portion of <b>092504-9424</b>

Trinity-Trailside Trail Connector Crossing Permit SPU R/W File # 15-804

**THIS PERMIT AGREEMENT (“Permit”) is entered into by and between The City of Seattle, a municipal corporation of the State of Washington, acting through its Seattle Public Utilities department (the “City” or “SPU”) and TRINITY TRAILSIDE, LLC, a Washington limited liability company and its successors and assigns and TRAILSIDE SH HOLDINGS, LLC a Delaware limited liability company and its successors and assigns (the “Permittees”). The City, SPU and Permittees are collectively referred to herein as “the Parties.”**

**RECITALS**

WHEREAS, the City owns in fee, real property known as the Maple Leaf Water Transmission Pipeline right of way, which is located abutting and westerly of 4801 24<sup>th</sup> Avenue NE, Seattle, WA., as further described in Section 1.1. (the “SPU Property”); and

WHEREAS, as a condition of the City’s approval of Permittee’s request for the vacation of a portion of NE 48<sup>th</sup> St. public street right-of-way between 24<sup>th</sup> Ave NE and the Burke Gilman Trail (the “Street Vacation”), Permittee is required to construct and maintain a pedestrian trail connector crossing the SPU Property (“the Trail Connector”), as provided in the Property Use and Development Agreement for the Street Vacation between the City and Permittee as Declarant to be executed at a date after the effective date of this permit. (“PUDA”); and

WHEREAS, SPU granted permission to Trailside SH Holdings, LLC as owner of property adjacent to the SPU Property to construct the Trail Connector to the Burke-Gilman Trail through the SPU

Property under Amendment Number 1 to SPU's Permit Agreement # 15-403, dated September 23, 2020; and

WHEREAS, SPU is willing to allow limited use of a portion of the SPU Property by Permittee for maintaining the Trail Connector for use by the public, subject to the obligations, terms, and conditions contained herein.

NOW THEREFORE the Parties agree as follows:

**1. PERMITTED USE:**

- 1.1. Grant. SPU grants to Permittee, its successors and assigns, limited and nonexclusive permission to use the real property (the "Permit Area") described and depicted in **EXHIBITS A-1 and A-2** attached hereto and the real property (the "Landscape Area") described and depicted in **EXHIBIT A-3** solely for the permitted use as described in Section 1.2 of this Permit.
- 1.2. Permitted Use. SPU permits Permittee, its successors and assigns, to use the Permit Area for maintenance, repair, and replacement of: 1) the Trail Connector, a paved pedestrian trail, constructed by Permittee under SPU Permit Agreement #15-403, dated September 23, 2020 for use by the public; (2) utilities installed by Permittee under the Trail Connector that serve the public amenities along the Burke Gilman Trail; and 2) native landscaping within the Landscape Area, as required by the terms and conditions of the Street Vacation and the PUDA ("Permitted Use").
- 1.3. Limitations on and Changes to Permitted Use. Permittee's use of the Permit Area is limited to Permitted Use, subject to the obligations, terms, and conditions of this Permit. Any and all changes to Permitted Use must be approved by SPU's General Manager/CEO or designee through written amendment to this Permit executed by the Parties.
- 1.4. Non-exclusive Use. This Permit and Permittee's use of the Permit Area may be subject to existing rights of third parties. The use herein granted to Permittee shall be non-exclusive and SPU reserves to itself, its successors and assigns the right to use the Permit Area for any purpose, and the right to grant other permits which shall not unreasonably conflict with the Permitted Use. Permittee shall not interfere with access or use of the Permit Area by other such authorized parties.
- 1.5. Suitability of Use. Permittee understands and agrees that SPU makes no representations to the suitability of the Permit Area for the Permittee's purposes and use.

**2. EFFECTIVE DATE/TERM:**

Effective Date. This Permit shall be effective on the date it has been signed by SPU. This Permit is not valid until signed by an authorized representative for Permittee and counter-signed by the SPU Division Manager of Real Property Services.

**3. PERMIT FEES:**

- 3.1. Fee amount. As of the Effective Date, and on or before January 31<sup>st</sup> of each year thereafter for the term of the Permit, Permittee shall pay a Permit fee ("Permit Fee") for the Permit Area described in Exhibits A-1 and A-2, which shall be the sum of an annual use fee and an annual administrative fee (SPU Director's Rule FIN-220.4 Rev.2, Real Property Charges, 2/11/2022), as delineated in **Exhibit B**. The Permit fee for the first year shall be prorated from the Effective Date to December 31st of the year of the Effective Date.
- 3.2. Failure to pay Permit Fee. SPU reserves the right to assess late fees and interest if Permittee fails to pay the Permit Fee as provided in 3.1 herein, and seek all other administrative and legal remedies available to it to enforce the payment terms of this Permit. Failure to pay shall in no way relieve or excuse the Permittee from complying fully with its obligations pursuant to this Permit and the PUDA.

- 3.3. Fee adjustment. SPU may adjust the Permit Fee annually based on updates to published standard pricing or updates to the assessed property values used in the calculation of the Permit Fee, as stipulated in SPU Director's Rule FIN-220.4 Rev.2, Real Property Charges, 2/11/2022. Changes to Permitted Use approved by SPU as provided in Section 1.3 may also result in a fee adjustment at the time of approval of the change by SPU.
- 3.4. Taxes. As of the effective date of this Permit, there are no applicable taxes that would be due as a result of Permittee's use of the Permit Area or Landscape Area or for improvements. Should any taxation laws change in the future, Permittee shall be liable for all taxes deemed by King County, the State of Washington, or other taxing entity responsible thereof, created by this Permit and/or due as a result of Permittee's use of the Permit Area or any improvements, or personal property placed upon it. These taxes may include, but are not limited to, the Leasehold Excise Tax that, if applicable, will be collected for the State of Washington by SPU together with the Permit Fee.

#### 4. MAINTENANCE OF PROPERTY AND PERMITTEE OPERATIONS:

- 4.1. Permittee Obligations. Permittee is responsible for performing its obligations under this Permit and limiting its activities on and within the Permit Area and Landscape Area to those approved in this Permit in Section 1 "Permitted Uses."
- 4.2. Maintenance of Permit Area and Landscape Area.
  - 4.2.1. Permittee will operate and maintain the Permit Area and Landscape Area in a clean, safe, and orderly condition at all times. Permittee will not allow Hazardous Substances to be released into the environment on the Permit Area or the Landscape Area, and shall not use pesticides, herbicides, or other weed-killing substances on the Permit Area or Landscape Area.
  - 4.2.2. SPU is under no obligation to maintain or assume any costs associated with maintaining the Permit Area or Landscape Area for the benefit of Permittee.
- 4.3. Permittee Improvements.
  - 4.3.1. Permittee will be responsible for operating, maintaining, and repairing its improvements within the Permit Area and Landscape Area at its own expense, including repairs that may be caused by SPU's operation, management, or control of the Permit Area except if caused by the sole negligence or intentional misconduct of SPU.
  - 4.3.2. Any property improvements or installation of structures proposed by Permittee must be pre-approved in writing by SPU Project Delivery and Engineering Branch Deputy Director. SPU will review and approve any designs for allowable structures or improvements, or plans for allowable activities, and may require that the design or plans include preventative measures to protect water quality in utility systems, receiving waters, or other sensitive areas, as well as the security and physical integrity of the utility property. The preventative measures may include but are not limited to denial of certain structures or activities, adjustments, or corrections to designs or plans, and specific ongoing monitoring and oversight.
  - 4.3.3. New structures approved by SPU Project Delivery and Engineering Branch Deputy Director after the Effective Date of the Permit may result in an increase in the Permit Fee.

4.3.4. Permittee's placement of any improvements or personal property in the Permit Area shall be at Permittee's sole risk, and Permittee hereby releases the City from any claims for loss or damage to Permittee's property in the Permit Area. SPU is not responsible in any way for damage to the Permittee's improvements within the Permit Area, including damage by SPU or the public.

4.3.5. During the term of the Permit and upon notification by SPU, Permittee, at the Permittee's sole expense, will be responsible for relocating, removing, and restoring any of its permitted structures or improvements within the Permit Area as needed for SPU to perform maintenance, repair, and replacement of SPU facilities. In case of emergency or should SPU otherwise elect, SPU may perform such removal or relocation itself at Permittee's cost. Upon completion of its work, SPU shall restore the Permit Area to level uncompacted and unpaved soil, and it shall be the Permittee's responsibility to restore its improvements at its own cost. If Permittee fails to restore the improvements, including but not limited to the paved pedestrian trail, then Permittee shall pay for such restoration costs incurred by SPU. SPU reserves the right to seek all other administrative and legal remedies available to it to obtain repayment for such restoration costs from Permittee.

4.4. Heavy Equipment and excavations.

Permittee agrees that during any construction, operation or maintenance of said permitted use no heavy equipment shall be used or excavations conducted without prior approval and permission of SPU's Project Delivery and Engineering Branch Deputy Director. Permittee shall not cross the Permit Area with any load heavier than the equivalent of a pickup truck without prior approval and permission from SPU Project Delivery and Engineering Branch Deputy Director.

**5. SPU ACCESS AND OPERATIONS:**

5.1. SPU Access. SPU will at all times have free access to the Permit Area for the operation, maintenance and repair of its pipeline or facilities or for any other purpose. If SPU, in its discretion, desires to undertake activities on the Permit Area that may impact the operation of the permitted use, SPU will endeavor to give Permittee reasonable notice under the circumstances.

5.2. Closure of Property. SPU may close the Permit Area at times for the installation, repair or replacement of its pipelines or facilities, or to make other improvements. Permittee shall not be entitled to payment for damages for any loss of use of the Permit Area during such operation, maintenance, and repair; except for return of a prepaid Permit Fee covering the time Permittee was not allowed use of the Permit Area.

**6. TERMINATION:**

6.1. Termination. This Permit may be terminated with or without cause upon thirty (30) days' notice by SPU, subject to the terms and conditions of the PUDA, and upon concurrence of SDOT.

6.2. Prepaid Permit Fees. Upon termination, SPU will refund any prepaid Permit Fee to Permittee prorated for periods extending beyond the termination of this Permit.

6.3. Permittee Obligations. Upon termination of this Permit, Permittee agrees to quit and surrender the Permit Area in as good state or condition as exists as of the Effective Date. Upon the written request of SPU, Permittee agrees to remove from the Permit Area all property of Permittee, and to repair and restore that portion of the Permit Area affected by Permittee's facilities to a condition at least equal to that existing at its completion of construction of the paved pedestrian trail, including removal of any Hazardous Substances on or within the Permit Area, all subject to the approval of SPU General Manager/CEO

## 7. INSURANCE:

7.1 As set out in Section 11 of the PUDA, prior to the commencement use of the permit Area pursuant to this Permit and all times during the effective date of this Permit, Permittee shall provide and thereafter maintain in full force and effect, commercial general liability insurance providing for a limit of not less than \$1,000,000 per occurrence for damages arising out of bodily injuries or death. The insurance policies obtained shall be issued by companies authorized to conduct business in Washington State and shall name the City as an additional insured. The Permittee shall provide evidence of insurance to the City Risk Manager at the City's reasonable request.

7.2 EVIDENCE OF INSURANCE. Prior to commencing any of the activities approved by a permit, the applicant, at no expense to the City, shall provide all of the following evidence of insurance:

A Certificate of Insurance showing the policy number, effective dates and limits of liability.

An Additional Insured Endorsement designating the "City of Seattle" as an additional insured for governmental permitting under an ISO form CG 2012 or CG 2026 or equivalent or blanket policy wording. The endorsement must include the policy number.

## 7.3 NOTIFICATIONS

7.3.1 The Certificate Holder for notice of cancellation purposes: (City of Seattle-SPU, Attn: Risk and Quality Assurance Section, Seattle Public Utilities, 700 5<sup>th</sup> Ave, Suite 4900, Seattle, WA, 98124)

7.3.2 Send Insurance Certification to: [SPU\\_Claims@Seattle.gov](mailto:SPU_Claims@Seattle.gov).

## 8. GENERAL CONDITIONS

### 8.1 Compliance with Applicable Laws and Regulations

8.1.1 Permittee shall comply with all applicable federal, state, and local laws, ordinances, codes, rules, and regulations, including but not limited to health, safety, and environmental laws.

8.1.2 During the term of this Permit, the Permittee agrees to not cause or permit SPU's property to become contaminated with any Hazardous Substances or Pollutants. Upon notice or discovery of any release of any Hazardous Substance or Pollutants caused by the Permittee to occur upon the SPU Property, the Permittee shall, at its own costs, immediately take all necessary steps to respond to, and clean up the same and restore the SPU Property to its pre-existing condition in accordance with applicable Environmental



Laws and Requirements. The Permittee shall report any such release, to SPU Project Delivery and Engineering Branch within 24 hours of discovery.

8.2 Indemnification. Permittee shall indemnify the City as follows:

8.2.1 Permittee shall release, defend, indemnify and hold harmless the City and its officials, employees, agents, licensees, contractors, consultants and representatives (collectively, the "Indemnitees") from and against any and all claims, liens, demands, actions, costs, losses, expenses, harm, damages, and liability of any kind or character (collectively, "Claims"), including any damage or injury to any person or property, asserted or arising from, on account of, caused by, or in any way related to (i) Permittee's exercise of its rights or obligations under this Permit Agreement, (ii) the acts or omissions of Permittee or Permittee's employees, agents, consultants, contractors, representatives, or licensees in or upon the Property, or (iii) the existence of, damage to, or failure of any of Permittee's improvements both on and off the Property; provided, however, nothing herein shall require Permittee to so indemnify and hold harmless the Indemnitees from Claims arising out of any damage or injury to any person or property to the extent caused by or resulting from the Indemnitees' negligence.

8.2.2 As between the parties and solely for the purpose of effectuating the indemnities contained in this Section 8.2, Permittee specifically and expressly waives, with respect to the Indemnitees, its immunity and limitation, defense or protection on liability that may be granted to it under any industrial insurance legislation, including but not limited to, the Washington State Industrial Insurance Act, Revised Code of Washington Title 51 or any other industrial insurance, workers' compensation or similar laws of the State of Washington. This section shall not be interpreted or construed as a waiver of Permittee's right to assert any such immunity, defense or protection directly against any of its own employees or such employee's estate or other representatives. Permittee acknowledges that this Section 8.2 was specifically entered into after mutual negotiation.

8.2.3 The Indemnifications set forth in this agreement shall survive the expiration or earlier termination of this Permit.

8.3 Damages. Permittee shall correct at its expense any damages to SPU's utility system, property or facilities that arise out of its actions or activities within the Permit Area as stipulated in Section 8.4. If Permittee has not corrected or made an acceptable agreement with SPU to correct any condition caused by Permittee within the stipulated timeframe, SPU, in its sole discretion, may revoke this Permit pursuant to Section 6.1 or SPU may perform any required work, and all reasonable costs incurred will be billed to Permittee. SPU may act immediately for conditions which pose a threat to public health, safety or the environment. Permittee agrees to pay such bills, invoices or demands for payment in a timely manner.

8.4 Permit Violations and Remedies. If Permittee violates the terms or requirements of this Permit, Permittee will have fourteen (14) days after receipt of notice of violation to cure the specified violation. If cure cannot be accomplished within such fourteen-day period, SPU shall grant Permittee a longer period as is reasonably necessary to effect such cure, so long as such cure has been commenced within such fourteen-day period and is being diligently pursued. The City of Seattle shall have all rights and remedies available to it under law available to enforce the terms

and conditions of this Permit, including but not limited to any violation of the terms or requirements of this Permit by Permittee.

- 8.5 Revocable Use. Permittee's use of the Property is revocable upon 30-days written notice upon concurrence of SDOT and subject to the termination conditions of the PUDA. This Permit or Permittee's use of the Permit Area does not grant or convey any permanent property rights or change SPU rights in any way.
- 8.6 Other Permits. This Permit shall not be construed to replace or to be used in lieu of any other permit or licenses that may be required, granted or supervised by any other agency or subdivision of government.
- 8.7 Actions of Other Parties. The Permittee expressly agrees that the actions of its employees, contractors, agents, invitees, or licensees of the Permittee are considered to be the same as if performed or caused by the Permittee.
- 8.8 Assignability of Permit. Permittee shall provide SPU with advance written notice if this Permit is transferred or assigned to a successor of the PUDA Declarant.
- 8.9 Emergency Conditions. In the event of an emergency condition that presents an immediate threat to life or property on or near the Permit Area, Permittee may take immediate, reasonable actions to remove or reduce the immediate threat; provided, however that Permittee must (1) provide SPU with notice of such actions as soon as practicable, (2) seek input from and coordinate with SPU at all reasonable junctures during any response to the immediate threat and any subsequent remedial action, and (3) remain responsible for any and all damage, including restoring the Permit Area to the same or better condition after such remedial actions are completed and the threat has been resolved.
- 8.10 Recording of Permit. This Permit shall be recorded with the King County Recorder's Office as an exhibit to the PUDA documents against Permittee's real property adjacent to the Permit Area.

## 9. CONTACTS:

SPU Emergency contact:

### 24-hour Emergency Number

Operations Response Center (ORC) (206) 386-1800, Ext 3

SPU Contact, other purposes:

Seattle Public Utilities (206) 386-9166 or (206) 386-1814

Real Property Services SPU\_Real Property@seattle.gov

PO Box 34108

Seattle WA 98124-4018

City of Seattle-SPU (206) 233-2000

Risk and Quality Assurance Section

Seattle Public Utilities

700 5<sup>th</sup> Ave, Suite 4900

Seattle, WA, 98124)

Permittee Contacts:

Trinity Trailside, LLC  
2825 Eastlake Ave E, Ste 200  
Seattle, WA 98102

Contact: James B Rose, Managing Member  
Phone: 206-315-1829  
Cell phone: 206-465-4979  
Email: [jrtrinity85@hotmail.com](mailto:jrtrinity85@hotmail.com) and  
[mschreck123@msn.com](mailto:mschreck123@msn.com)

Trailside SH Holdings, LLC  
c/o Barings, LLC  
2321 Rosecrans Ave, Suite 4225  
El Segundo, CA 90245

Contact: Asset Manager (Trailside Student  
Housing) (with copies to Jason Runnels  
and Preston Hart)

Asset Manager Phone: (310) 234 - 2525


Cell phone: Jason (214) 763-7163  
Email: [jrunnels@ppc-usa.com](mailto:jrunnels@ppc-usa.com)  
Cell phone: Preston (903) 316-7206  
Email: [phart@ppc-usa.com](mailto:phart@ppc-usa.com)

**Document continued next page**

THIS PERMIT AGREEMENT is entered into by and between the CITY OF SEATTLE, a municipal corporation of the State of Washington acting through and by Seattle Public Utilities and Trinity Trailside, LLC and Trailside SH Holdings, LLC

Dated this 28<sup>th</sup> day of June, ~~2022~~ 2023

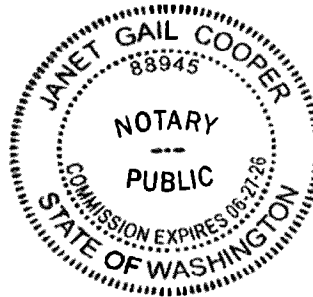
Trinity Trailside, LLC


  
James B. Rose  
Managing Member

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING        )

On this day personally appeared before me **James B. Rose**, to me known to be the **Managing Member of Trinity Trailside, LLC**, a Washington limited liability company, the company that executed the within and foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute said instrument on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 28<sup>th</sup> day of June, ~~2022~~ 2023.



  
Janet G Cooper  
NOTARY PUBLIC in and for the State of  
Washington, residing at Seattle  
My Commission expires: 06-27-2026

Dated this 22 day of August 2023.

Trailside SH Holdings, LLC,  
A Delaware limited liability company

By: Trailside SH JV LLC,  
A Delaware limited liability company  
its sole member

By: Trailside MM Member LLC,  
A Delaware limited liability company,  
Its manager

By: [Signature]  
Benjamin E. Green  
Managing Director

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this day personally appeared before me **Benjamin E. Green**, to me known to be the **Managing Director of Trailside MM Member LLC, a Delaware limited liability company**, the company that executed the within and foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute said instrument on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**SEE ATTACHED  
CERTIFICATE**

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**APPROVED BY SEATTLE PUBLIC UTILITIES**

[Signature]  
Gerry Caruso,

Acting Real Property Manager

Aug 30, 2023  
Date

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

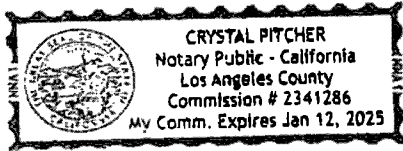
State of California

County of Los Angeles }

On Aug. 22, 2023 before me, Crystal Pitcher, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Benjamin E. Green  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Crystal Pitcher  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian of Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian of Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

## EXHIBIT A-1

### TRAIL CONNECTOR LEGAL DESCRIPTION

THAT PORTION OF THE CITY OF SEATTLE MAPLE LEAF PIPELINE RIGHT OF WAY LYING WITHIN THE FOLLOWING DESCRIBED PORTION OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 09, TOWNSHIP 25 NORTH, RANGE 04 EAST OF THE WILLAMETTE MERIDIAN MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINES OF RIGHT-OF-WAY OF 24TH AVENUE NORTHEAST AND NORTHEAST 47TH STREET;

THENCE SOUTH 00° 59' 01" WEST ALONG THE SOUTHERLY PROJECTION OF THE CENTERLINE OF SAID 24TH AVENUE NORTHEAST, A DISTANCE OF 25.00 FEET TO THE SOUTH MARGIN OF RIGHT-OF WAY OF SAID NORTHEAST 47<sup>TH</sup> STREET;

THENCE DEPARTING NORTH 88° 47' 27" WEST ALONG SAID SOUTH MARGIN, A DISTANCE OF 25.00 FEET TO THE WEST MARGIN OF RIGHT-OF-WAY OF SAID 24TH AVENUE NORTHEAST;

THENCE CONTINUING NORTH 88° 47' 27" WEST ALONG THE WESTERLY PROJECTION OF SAID SOUTH MARGIN, A DISTANCE OF 162.85 FEET TO THE EAST MARGIN OF THE CITY OF SEATTLE PIPELINE RIGHT OF WAY AS CONDEMNED BY ORDINANCE NUMBER 56125, SAID POINT BEING THE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE CONTINUING NORTH 88° 47' 27" WEST ALONG SAID WESTERLY PROJECTION A DISTANCE OF 24.79 FEET TO THE EASTERLY MARGIN OF THE BURKE GILMAN TRAIL;

THENCE DEPARTING NORTH 13° 18' 54" WEST ALONG SAID EASTERLY MARGIN, A DISTANCE OF 18.67 FEET;

THENCE NORTH 89° 58' 58" EAST, A DISTANCE OF 24.66 FEET TO SAID EAST MARGIN OF THE CITY OF SEATTLE PIPELINE RIGHT OF WAY;

THENCE SOUTH 13 ° 18' 54" EAST ALONG SAID EAST MARGIN, A DISTANCE OF 19.21 FEET TO THE POINT OF BEGINNING;

THE ABOVE-DESCRIBED PARCEL CONTAINS 455 SQUARE FEET (0.0104 ACRES), MORE or LESS.

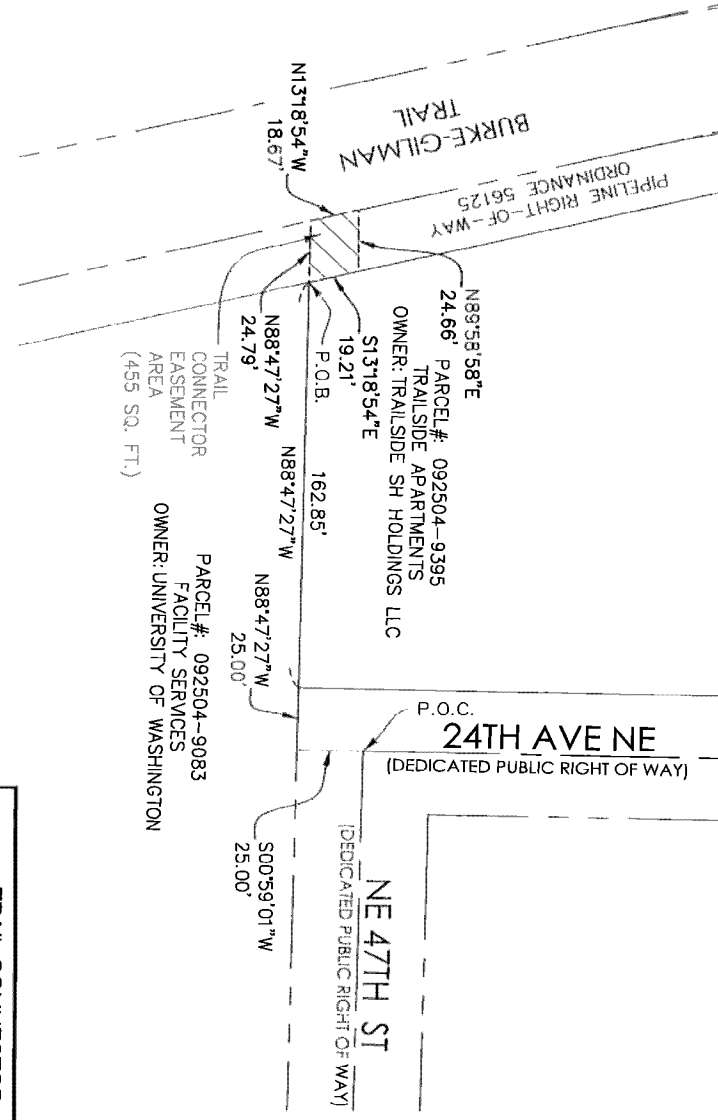
SITUATED IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON



PPC LAND VENTURES, INC  
TRAILSIDE PHASE I  
JAMES HARPER, P.L.S.  
BRH JOB NO. 2018087.07  
MARCH 17, 2020  
REV. MAY 24, 2022

BUSH, ROED & HUTCHINGS, INC.  
2009 MINOR AVENUE EAST  
SEATTLE, WA 98102  
(206) 323-4144

**EXHIBIT A-2**



IN THE SE 1/4 OF THE SW 1/4 SEC. 9, TWP. 25 N., RGE 4 E., W.M.



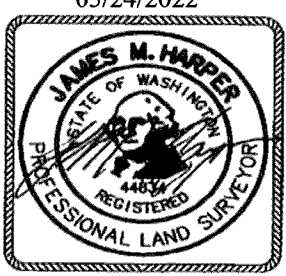
SCALE: 1"=60'

**LEGEND**

- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT

DRAWN BY: JRM  
 CHECKED BY: JMH

05/24/2022



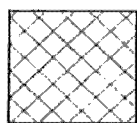
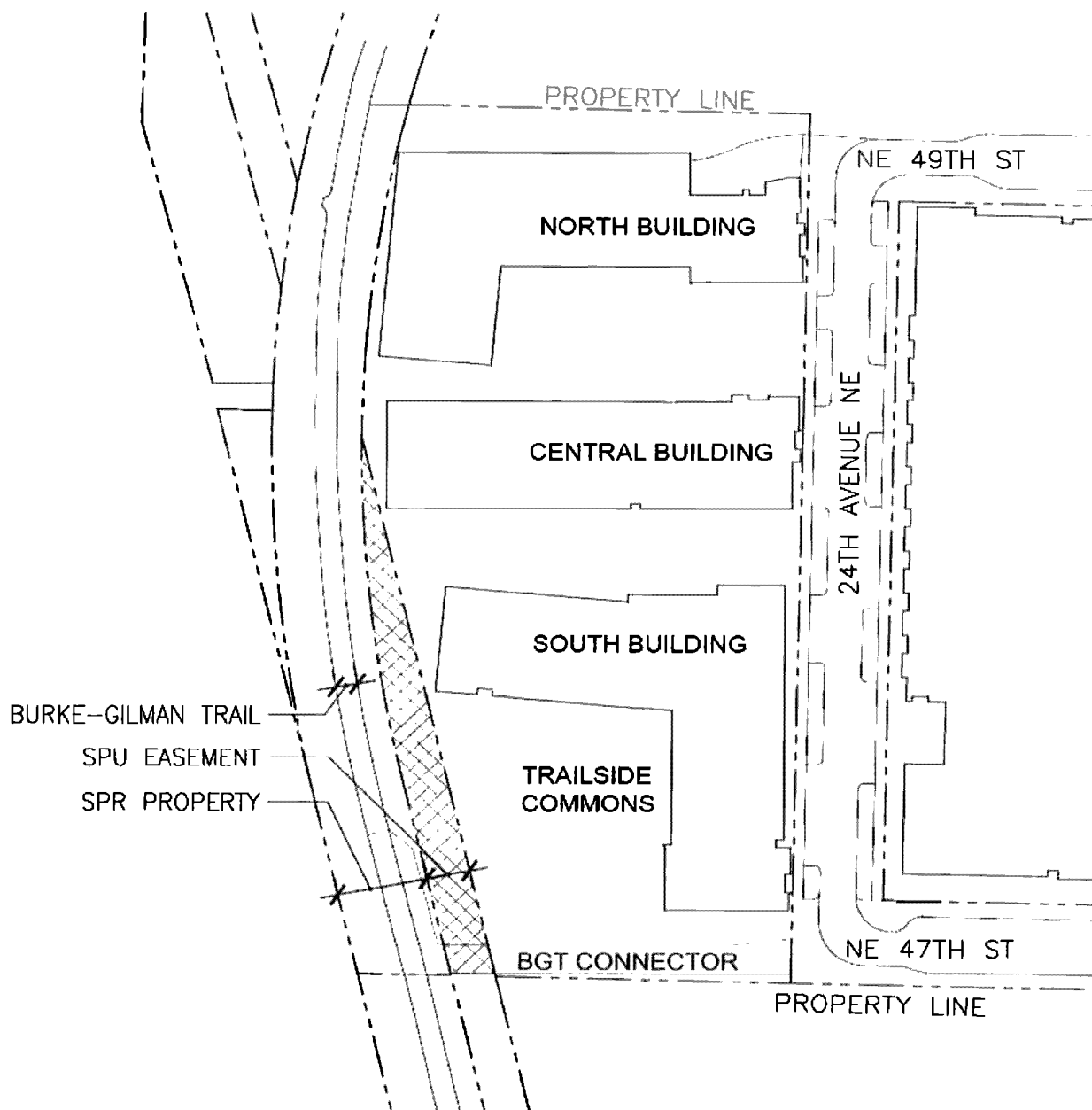
TRAIL CONNECTOR  
 EASEMENT EXHIBIT  
 PHOENIX PROPERTY CO.  
 SEATTLE KING COUNTY WASHINGTON

**BRH**  
**BUSH, ROED & HITCHINGS, INC.**  
 LAND SURVEYORS & CIVIL ENGINEERS  
 2009 MINOR AVE. EAST  
 SEATTLE, Washington  
 98102-3513  
 (206) 323-4144  
 DATE: 03/17/2020  
 JOB NO.: 2018087.07



### EXHIBIT A-3

#### PUBLIC BENEFIT IMPROVEMENTS ON SPU PROPERTY (TRAILSIDE APARTMENTS)



**NATIVE PLANTING RESTORATION AND TRAIL  
IMPROVEMENTS ON SEATTLE PUBLIC UTILITIES  
EASEMENT**

**EXHIBIT B  
 Annual Permit Fee**

Below is the basis for the Annual Permit Fee applicable for the 12-month period from January 1, 2023, to December 31, 2023. This fee will be adjusted annually per the terms of SPU Director's Rule FIN-220.4 Rev.2, Real Property Charges, or as revised.

The Initial Fee will be calculated as follows:

Annual Administration Fee	Annual Land Use Fee	Annual Permit Fee
\$200	\$1,795.25	\$1,997.25



Assessed Value per Square Foot	10% Rate of Return	10% Adjustment Factor	455 Permitted Square Feet
\$395	\$39.50	\$3.95	\$1,797.25

Property Use	Adjustment Factor (%)
Access Only	10
Landscaping/Lawn	10
Parking	10
Single Family	10
Multi-family or Office	30
Mixed Use	40
Other Commercial	50
Recreation	10
Non-commercial	10
Commercial	30
Structure	100