

**MEMORANDUM OF UNDERSTANDING  
(MERCER MEGA BLOCK)**

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By and Between

**THE CITY OF SEATTLE,**  
a Washington municipal corporation

and

**800 MERCER, LLC,**  
a Delaware limited liability company

**615 DEXTER, LLC,**  
a Delaware limited liability company

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## **EXHIBITS LIST**

<u>Exhibit A</u>	Legal Description of The Property
<u>Exhibit B</u>	Depiction of Property
<u>Exhibit C</u>	Form of Public Benefit Housing Covenant
<u>Exhibit D</u>	Form of MFTE Covenant
<u>Exhibit E</u>	Recreation Center Lease Term Sheet
<u>Exhibit F</u>	Purchaser's Pro-Forma Title Policy

## MEMORANDUM OF UNDERSTANDING (MERCER MEGA BLOCK)

This MEMORANDUM OF UNDERSTANDING (MERCER MEGA BLOCK) (“**MOU**”), dated this \_\_\_ day of \_\_\_\_\_, 2019 (“**Effective Date**”), is entered into by and between THE CITY OF SEATTLE, a Washington municipal corporation (“**Seller**”), and 800 MERCER, LLC (“**800 Mercer LLC**”) and 615 DEXTER, LLC (“**615 Dexter LLC**”) (collectively, 800 Mercer LLC and 615 Dexter LLC and/or affiliates shall be “**Purchaser**”). Seller and Purchaser are referred to in this MOU individually as a “**Party**” and jointly as the “**Parties**.”

### RECITALS

A. On July 11, 2018, Seller released a Request for Proposal (the “**RFP**”) for the redevelopment of a 2.86-acre site located in Seattle’s South Lake Union neighborhood commonly known as the Mercer Mega Block (“**Property**”), which is legally described on Exhibit A attached hereto. Seller’s priorities for the redevelopment of the Property include each of the following:

1. To provide a world-class development comprised of well-integrated commercial uses, mixed-use, residential housing, and community benefits that will build upon and grow the vitality, affordability, and economic development of the South Lake Union Urban Center.
2. To maximize the benefits for affordable housing, either through direct production of affordable units on the site, or by maximizing the financial offer in order to create revenue that would be invested in affordable housing at another location;
3. To provide strong, street-level activation and actively managed open space that incorporates place-making best practices and becomes a place of local and regional pride;
4. To provide uses that will benefit the broader community;
5. To achieve a high level of sustainability in the design, construction and operation of the project; and
6. To comply with certain minimum development requirements as described in the RFP.

B. On October 5, 2018, Purchaser submitted to Seller a proposal in response to the RFP and on December 7, 2018, Purchaser submitted to Seller a response to Seller’s November 16, 2018 Mercer Mega Block Request for Proposals - Best and Final Offer Request (collectively, the “**Response**”) for the development of approximately 790,000 square feet across two state-of-the-art, sustainable, and thoughtfully designed towers that will incorporate a mix of commercial space and a dynamic community gathering space (the “**Commercial Buildings**”). The Commercial Buildings will connect to the community through a plaza between the two buildings



offering pedestrian access along 8th Avenue North. In addition to the Commercial Buildings, the project will incorporate at least 175 units of affordable housing on the 615 Dexter property (the "**Housing Project**"). Collectively, the Commercial Buildings and the Housing Project shall constitute the "**Development Project**". Purchaser's parent company, Alexandria Real Estate Equities, Inc. ("**Alexandria**") is an urban office real estate investment trust with a longstanding and proven track record of developing Class A properties. Alexandria owns, operates, and develops collaborative life science and technology campuses in top urban innovation clusters such as Seattle, San Francisco, Greater Boston, New York City, and San Diego.

C. Seller formed an evaluation committee (the "**Evaluation Committee**") to consider proposals responding to the RFP and make a recommendation to Seller for approval of the selected respondent in accordance with certain evaluation criteria described in the RFP.

D. Based on the input of the Evaluation Committee, Seller selected the Response as the preferred proposal for the redevelopment of the Property.

E. On February 7, 2019, Seller and Purchaser entered into an Exclusive Negotiation and Access Agreement ("**ENA**"), providing Purchaser with access to property information and the Property and providing Purchaser with certain exclusive negotiation rights for the purchase of the Property. The access and exclusive rights under the ENA shall be incorporated into this MOU.

F. On February 12, 2019, Purchaser deposited \$7 million into escrow with Chicago Title Insurance Company ("**Escrow Agent**") in accordance with the terms of the ENA (the "**Deposit**"). The refundability of the Deposit will be governed by the ENA until such time as the Parties enter into the DDA (defined below), which will address the refundability of the Deposit and will provide for the closing of the transactions described therein through Escrow Agent ("**Closing**").

G. Between February 7, 2019 and the Effective Date, Purchaser and Seller have negotiated the terms of this MOU, which the Parties intend to use as the basis to negotiate the terms of a definitive Disposition and Development Agreement ("**DDA**") and related documents consistent with the terms, conditions, and limitations of this MOU.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as to the following:

## UNDERSTANDINGS

### 1. Purpose and Term of Agreement.

a. **Purpose.** This MOU sets forth the material terms upon which Seller and Purchaser will negotiate the DDA and related documents for the purchase, sale and development of the Property, including Purchaser's design, development and construction of the Development Project. It is the Parties' intent that if such negotiations are successful, then the terms of this MOU shall be incorporated into the DDA and such ancillary documents as may be mutually agreed by the Parties as necessary to further implement the terms of the DDA (collectively, the

**"Transaction Documents"**). The Transaction Documents shall be consistent in all material respects with the terms and conditions of this MOU and shall otherwise be in form and substance reasonably acceptable to Purchaser and Seller. Certain of Purchaser's post-Closing obligations under the Transaction Documents will be further memorialized by an unsubordinated recordable Memorandum of the DDA (**"Memorandum of DDA"**) to be recorded against the title to 615 Dexter (defined below) at Closing and released upon Purchaser's substantial completion of the Housing Project.

b. **Term; Exclusivity.** The Parties' obligation to negotiate the Transaction Documents under this MOU shall commence upon its Effective Date and terminate upon the earliest to occur of the following: (i) the date the Parties enter into the Transaction Documents; or (ii) one hundred eighty (180) days after the date upon which the Authorizing Ordinance described in Section 4(a) becomes effective law; provided that the foregoing 180-day period may be extended for an additional one hundred eighty (180) days upon mutual written agreement of the Parties. The term of the ENA will be extended during the term of this MOU and Seller shall not negotiate with any person or entity other than Purchaser (or its designee or permitted assignee) regarding the disposition or redevelopment of the Property, or solicit or entertain bids or proposals to do so.

2. **Location; Parcel Descriptions; Access to Property.** The Property is located on the north side of Mercer Street between Ninth Avenue North and Aurora Avenue North in Seattle, Washington, as legally described on Exhibit A and as depicted on Exhibit B attached hereto. The Property consists of three separate **"Parcels"**. The Parcels are referred to in this MOU as **"Mercer East"**, **"Mercer West"** and **"615 Dexter"** as shown on Exhibit B. Seller has established each of Mercer East, Mercer West and 615 Dexter as a separate legal lot pursuant to Lot Boundary Adjustment Number 3033220-LU, recorded May 24, 2019 under recording number 20190524900001 in the records of King County. Purchaser intends to purchase Mercer East and Mercer West through 800 Mercer, LLC, and 615 Dexter through 615 Dexter, LLC.

3. **Development and Disposition Agreement; Project Elements.** The Parties anticipate that the DDA will include the following terms and that the Development Project will contain the following elements (as applicable):

a. **Purchase Price.** Purchaser shall purchase the Property from Seller for One Hundred Thirty Eight Million Five Hundred Thousand and No/100 Dollars (\$138,500,000) (the **"Purchase Price"**). The Purchase Price will be allocated among the three Parcels upon a reasonable allocation as determined by Purchaser. The Purchase Price will be paid in all cash at Closing.

b. **Homelessness Contribution.** A payment of Five Million and No/100 Dollars (\$5,000,000) to Seller at Closing to support strategies to address homelessness in Seattle. Purchaser will work with Seller to determine how best to deploy the funds received from this contribution, which shall be paid in addition to the Purchase Price.



c. **Holdback to Secure Development of Housing Project.** An escrow holdback for security purposes as further described in Section 6 below with respect to development of the Housing Project.

d. **Project Financing.** The DDA will not include any financing contingency. Purchaser plans to fully fund the Purchase Price and the Development Project and does not anticipate that any secured financing will be necessary in order to commence construction. Notwithstanding the foregoing, Purchaser reserves the right to use debt or equity financing for either the Purchase Price and/or the Development Project, provided that (i) any such financing will not impact the transaction timeline, (ii) financing will not be a necessary condition of Closing and (iii) neither the Public Benefit Housing Covenant nor the Memorandum of DDA (each as defined herein) will be subordinated to the lien(s) securing any such financing.

e. **Onsite Affordable Housing Commitment.** As described in the Response, the DDA will provide for Purchaser's development of a housing development dedicated to helping address the housing affordability crisis in Seattle. In that regard, the Parties anticipate that the DDA will include the following terms:

i. As part of the Development Project, Purchaser will cause the construction and operation of certain affordable housing units on 615 Dexter, with the following elements:

A. One Hundred Seventy Five (175) rental housing units (the "**Minimum Number of Public Benefit Units**") affordable to households earning 60% of the Area Median Income ("AMI") (the "**Public Benefit Units**"). The obligation to provide the Public Benefit Units shall be memorialized by recorded covenant and shall continue for fifty (50) years from the date when the certificate of occupancy for the Public Benefit Units is issued. The form of covenant to be recorded on title for the Public Benefit Units will be attached to the DDA and will be substantially in the form attached hereto as Exhibit C (the "**Public Benefit Housing Covenant**"). The form of Public Benefit Housing Covenant will be executed at Closing and held in Escrow and updated upon the final design for the Housing Project, and recorded upon substantial completion of the Housing Project (or earlier, if requested by Purchaser) and, upon such recording, the Memorandum of DDA will be released from the 615 Dexter property. Thirty five (35) of the Public Benefit Units may also be designated by Purchaser as "**MFTE Housing Units**" pursuant to the City of Seattle's Multifamily Property Tax Exemption Program and, if so designated, shall be burdened by a recorded "**MFTE Covenant**" in the form attached hereto as Exhibit D. For so long as they are designated as such, the MFTE Housing Units shall be burdened by the MFTE Covenant and the Public Benefit Housing Covenant, but Seller agrees that (i) the Public Benefit Housing Covenant will be subordinated to the MFTE Covenant for so long as the MFTE Housing Units are designated as such and, (ii) to the extent there is any conflict between the MFTE Covenant and the Public Benefit Housing Covenant as to the MFTE Housing Units, the terms of the MFTE Covenant shall control for so long as the MFTE Covenant is in effect. Upon expiration or earlier termination of the MFTE Covenant, any MFTE Housing Units then occupied shall be counted as Public Benefit Units for purposes of satisfying Purchaser's obligation to provide the Minimum Number of Public Benefit Units under the Public



Benefit Housing Covenant, for so long as such units remain occupied by "Income Eligible Households" (as defined in the Public Benefit Housing Covenant).

ii. In addition to the Public Benefit Units, Purchaser shall, to the extent technically and financially feasible, cause the construction and operation of additional housing units within the Housing Project under the following housing programs:

A. Approximately one hundred fifty (150) units of market rate housing.

B. A number of "**workforce**" rental housing units equal to twenty percent (20%) of the total number of housing units constructed within the Housing Project under the City of Seattle's Multifamily Property Tax Exemption Program (the "**MFTE Housing**"). Seller acknowledges that up to thirty five (35) of the Public Benefit Units may also be designated MFTE Housing Units pursuant to the terms of Section 3(d)(i)(A) above.

f. **MHA Payment-in-Lieu on Housing Project.** In connection with Purchaser's development of the Housing Project, Purchaser will make a "payment-in-lieu" to the City of Seattle's Office of Housing under the City's Mandatory Housing Affordability Program in an amount equal to the then applicable requirements of the Seattle Municipal Code at the time such payment is required by applicable law.

g. **MHA Payment-in-Lieu on Commercial Buildings.** As part of Purchaser's development of the Commercial Buildings, Purchaser will make a "payment-in-lieu" to the City of Seattle's Office of Housing under the City's Mandatory Housing Affordability Program in an amount equal to the then applicable requirements of the Seattle Municipal Code.

h. **Recreation Center.** As part of the Development Project, Purchaser intends to construct a recreation/fitness center ("**Recreation Center**") on the Mercer West property for lease to the City of Seattle, acting through the Seattle Parks and Recreation Department ("**SPR**"). SPR's right to occupy and operate the Recreation Center, and its obligations with respect thereto, will be memorialized in a lease ("**Lease**") which will be attached as an exhibit to the DDA and signed at Closing. The DDA will establish a deadline by which SPR must either elect to proceed with the Lease or terminate the Lease. The Lease will incorporate the following terms:

i. SPR, at its sole cost and expense, will design the space in a manner consistent with the design standards of the Rainier Beach Community Center (the "**Design Standard**").

ii. Purchaser may instruct SPR to include design standards, equipment, operational standards and/or improvements above and beyond the Design Standard ("**Purchaser Changes**"), provided that Purchaser shall bear the incremental costs of any Purchaser Changes.

iii. Purchaser will construct the Recreation Facility in accordance with the agreed Design Standard to "cold shell" condition.

iv. The Recreation Center will be operated as a "Tier 1" center, as such term is defined in SPR's Community Center Strategic Plan of 2016; the Recreation Center shall be operated as best in class for public recreation centers. The Recreation Center space shall consist of up to 30,000 rentable square feet on the ground floor of the Mercer West project (the "Premises") based on design criteria described in the Lease.

v. Purchaser shall provide SPR with an allowance (the "**Tenant Improvement Allowance**") of \$3,000,000.00, which may only be used for the construction of tenant improvements in the Premises. The recreational elements of the Recreation Center shall include, at a minimum, athletic facilities (e.g. basketball court, fitness room, gym, rock climbing, but no aquatic facilities), which design shall be subject to Purchaser's written approval, not to be unreasonably withheld, conditioned or delayed. At SPR's election, Purchaser shall construct the tenant improvements to the Premises, with SPR funding any cost thereof in excess of the Tenant Improvement Allowance. Alternatively, Purchaser may offer to SPR an amortized schedule including a market interest rate over a ten year period to fund those amounts above the Tenant Improvement Allowance.

vi. SPR will have the right to engage its own construction management firm to provide oversight to the design, construction and engineering of the tenant improvements. Alternatively, if Purchaser provides those services, Purchaser will be paid a market-rate construction management fee for design, construction and engineering oversight of the tenant improvements.

vii. SPR shall pay no base rent for the Premises, but SPR shall be obligated to pay a proportionate share of operating expenses attributable to the Premises including, but not limited to, insurance, taxes (except to the extent that SPR's operation of the Recreation Center is a tax exempt use for which SPR obtains a property tax exemption for the benefit of Purchaser), utilities, maintenance, and repairs, and that SPR shall be responsible for the maintenance and repair of the Premises in accordance with an annual maintenance plan and budget approved by Purchaser.

viii. The Lease shall be for an initial term of twenty-five (25) years, with one (1) ten-year (10) extension option followed by one (1) five-year (5) extension option.

ix. The permitted use of the Premises under the Lease shall be for use as a recreation center, providing athletic facilities, classrooms, events, and education for children and adults. No other use shall be permitted without Purchaser's approval, which may be granted or withheld in Purchaser's sole discretion.

x. A short-form memorandum of the Lease will be recorded against title to the Mercer West property at Closing.

xi. A more detailed Term Sheet for the Lease is attached hereto as Exhibit E.



i. **Sustainability.** The Development Project will be designed and constructed to comply with applicable City of Seattle land use and building code requirements for sustainable construction and will strive to utilize modern practices of sustainable design and construction available at the time of construction in accordance with Purchaser's business interests. Purchaser shall, at a minimum, target LEED Gold Certification for the Development Project and to the extent financially and technically feasible, Purchaser shall also pursue additional sustainable initiatives.

j. **Environmental Matters; Prospective Purchaser Consent Decree.** The DDA will contain a covenant that Purchaser shall diligently pursue a Prospective Purchaser Consent Decree ("PPCD") from the Washington Department of Ecology ("Ecology") with respect to the Property and a condition to Purchaser's obligation to purchase the Property that Purchaser and Ecology have agreed to the terms of the PPCD and be willing and legally able to enter into the PPCD at Closing. Purchaser shall submit a formal request for a PPCD under WAC 173-340-520(2) within thirty (30) days from passage of the Authorizing Ordinance. The PPCD must (i) define the responsibility of Purchaser with respect to any hazardous substances on, under, about, migrating to or potentially migrating from the Property, and (ii) be acceptable to Purchaser in its sole discretion. The DDA will contain an outside date of eighteen (18) months from passage of the Authorizing Ordinance, by which date if the foregoing PPCD condition has not been satisfied, Purchaser must elect to either waive the PPCD condition or terminate the DDA.

k. **Remediate Environmental Contamination.** The DDA will provide that Purchaser will be solely responsible for and shall indemnify Seller for the cost to remediate environmental contamination on the Property. The DDA shall provide that Purchaser shall grant to Seller at Closing a full release for losses, liabilities and claims arising from the presence of environmental contamination on or near the Property.

l. **Labor Harmony Agreement.** The anticipated Development Project does not include plans for the construction of a hotel. To the extent the Development Project is modified to include a hotel, Purchaser shall require the hotel operator for such hotel to enter into one or more labor harmony agreements in form and substance reasonably acceptable to Seller and Purchaser if labor organizations which represent workers in Seattle have indicated their intent to organize operation and maintenance workers at such hotel. For avoidance of doubt, Purchaser is not obligated to construct a hotel.

m. **Project Labor Agreement.** Purchaser and/or its contractor(s) shall enter into one or more Project Labor Agreements ("PLA") governing construction of the Development Project, in form and substance reasonably acceptable to Seller and Purchaser. The PLA will establish worksite conditions and include community workforce goals that increase access to construction jobs for veterans, local residents, disadvantaged workers, and small businesses.

n. **8th Avenue Improvements.** Purchaser will construct certain 8<sup>th</sup> Avenue improvements between Mercer and Roy and implement the South Lake Union Urban Design Framework consistent with 8<sup>th</sup> Avenue North Design Guidelines and the terms of the City of Seattle Ordinance No. 89653 related to the vacation of a portion of 8th Avenue North and by



Ordinance No. 125597 (laying off, opening, widening, extending and establishing portions of Mercer Street) as well as comply with and carry out all conditions and public benefit requirements and obligations imposed as “Developer Obligations” (as defined in the petition under Clerk File 314309) under Ordinance No. 125599 (vacating portions of Broad Street, 8<sup>th</sup> Avenue North and Mercer Street), which shall be assigned to and assumed by Purchaser pursuant to Ordinance No. 125599. The “through block corridor” described in Ordinance No. 125599 (to be established as a pedestrian only right-of-way and associated plaza) will be an activated outdoor space that incorporates place-making best practices and will lead into activated, multipurpose spaces, open and accessible to the general public on the terms and conditions described in Ordinance No. 125599, including signage related thereto. Design for the 8<sup>th</sup> Avenue improvements will be reviewed both as part of the MUP Design Review Process and as part of the public benefit submission to the Seattle Design Commission pursuant to Ordinance No. 125586.

o. **Cycle Track.** Purchaser will extend the two-way protected bike lanes in accordance with SDOT design criteria on the north side of Mercer from Dexter to Ninth Avenue providing a key link in the bicycle network.

p. **Running Covenants.** To the extent that any of the foregoing matters are memorialized by recorded covenants burdening the title to the Property, Purchaser’s obligations with respect thereto shall run with the land and the DDA will provide that the same shall be binding and enforceable against Purchaser (and/or any subsequent owner).

q. **Title.** Title to the Property shall be transferred by Bargain and Sale Deeds, collectively insured for the Purchase Price by a title policy substantially identical to the pro forma title policy attached as Exhibit F.

r. **Property Taxes.** The DDA shall provide that Purchaser acknowledges that pursuant to RCW 84.36.010 the Property is not currently subject to property tax because Seller is a public entity, and that, if Closing occurs under the DDA, this public entity tax exemption will not extend to Purchaser’s ownership of the Property; Seller shall take all actions necessary to maintain the property tax exemption until Closing. Purchaser shall be responsible for any property taxes imposed as a result of the transfer of the Property or cessation of exempt use, including, without limitation, supplemental taxes imposed pursuant to statute, including without limitation RCW 84.40.360, none of which shall be prorated. The sale will be exempt from real estate excise tax pursuant to WAC 458-61A-205.

4. **Conditions Precedent.** The obligations of Purchaser and Seller under this MOU and the Transaction Documents shall be conditioned on the following condition(s) precedent.

a. **Authorizing Ordinance.** The City Council shall have passed an Ordinance authorizing Seller’s negotiation, execution, delivery and performance of the Transaction Documents on terms consistent with this MOU (the “**Authorizing Ordinance**”) and the Authorizing Ordinance shall have become effective law (after transmittal to and execution by the Mayor and expiration of applicable referendum periods). It is anticipated that the Authorizing Ordinance will be presented to City Council soon after execution of this MOU and prior to the



Parties' execution of the Transaction Documents and that the Authorizing Ordinance will be the only ordinance legally necessary for Closing to occur.

**5. Development Schedule for Housing Project.** The DDA will include Purchaser's covenant to diligently pursue development of the Housing Project and the following development schedule of milestones with respect to the development of the Housing Project (each, a "**Milestone**"): (i) Purchaser will schedule a MUP intake date for a master use permit for the Housing Project ("**MUP**") within eighteen (18) months after Closing; (ii) Purchaser will "commence construction" (as such term will be defined in the DDA) of the Housing Project before the expiration of an issued MUP (as the same may be extended or renewed); and (iii) Purchaser will achieve substantial completion (as evidenced by a duly issued Certificate of Occupancy) of the Housing Project no later than thirty-six (36) months after commencement of construction, provided that Purchaser may extend this Milestone for an additional period of up to twenty-four (24) months for good cause shown. The DDA will provide that in the event Purchaser fails to achieve a Milestone by the applicable deadline (unless such failure is the result of a Force Majeure event for which Purchaser is entitled to an extension of time under the DDA), then with respect to the Milestones set forth in Sections 5(i) and 5(ii), Seller shall have the right, upon thirty (30) days advance written notice, to require the 615 Dexter property, together with all improvements then situated thereon, to revert to Seller for nominal consideration (provided, however such reversion right shall terminate for the applicable Milestone upon Purchaser's achievement of the Milestone if such Milestone is achieved prior to the end of the 30 day notice period) and with respect to the Milestone set forth in Section 5(iii), Purchaser shall pay to Seller liquidated damages equal to \$1,000 per day until the date that Purchaser achieves substantial completion. Seller's foregoing reversion right will be perfected by a "deed in escrow" or similar arrangement acceptable to Purchaser and Seller. Upon substantial completion of the Housing Project, and recording of the Public Benefit Housing Covenant, Seller will execute a recordable release of the Memorandum of DDA and deliver the same to Purchaser for recording. The DDA will not include any development schedule with respect to the development of 800 Mercer.

**6. Escrow Agreement.** At Closing, Escrow Agent will be instructed to withhold from Seller's proceeds and deposit in escrow the sum of \$1,300,000.00 (the "**Escrowed Funds**") to be escrowed pursuant an escrow agreement in form and substance reasonably acceptable to Seller, Purchaser and Escrow Agent ("**Escrow Agreement**"). The Escrow Agreement shall provide for the Escrowed Funds to be released to Purchaser upon (i) Seller having received the MHA payment-in-lieu for the Housing Project described in Section 3(f) above, and (ii) Purchaser having commenced vertical construction of the Housing Project (as will be defined in the DDA). The Escrow Agreement will provide that if the foregoing conditions are not met by the 10<sup>th</sup> anniversary of Closing, the Escrowed Funds will be released to Seller.

**7. No Third-Party Beneficiaries.** No third party shall be or deemed to be a third party beneficiary of this MOU, such agreement being only between Purchaser and Seller.

**8. Counterparts.** This MOU may be executed in one or more counterparts, each of which will be deemed an original, but all of which, when taken together, will constitute one and the same instrument. Counterpart signature copies of this MOU may be delivered by facsimile or

email/.pdf and shall be deemed effective upon delivery, provided that originally executed copies shall be delivered by such party via overnight courier the following business day.

**9. Time is of the Essence.** Time is of the essence of this MOU and all covenants and deadlines hereunder.

**10. Limitation on Damages.** Notwithstanding anything to the contrary contained herein, neither Purchaser nor Seller shall be responsible for payment to the other party of consequential, special, or punitive damages in any way arising from this MOU or any claim of breach or failure under this MOU and the Transaction Documents shall include a similar limitation. Seller's liability under the Transaction Documents shall be limited to Seller's interest in the Property (and the proceeds from sale of the Property) and the Transaction Documents shall otherwise be non-recourse to Seller.

**11. Notice Provisions.** All notices provided for herein may be delivered in person, sent by Federal Express or other overnight courier service or mailed in the United States mail postage prepaid and, if mailed, shall be considered delivered three (3) business days after deposit in such mail. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a Party shall from time to time direct:

City: City of Seattle  
600 Fourth Avenue  
P.O. Box 94747  
Seattle, WA 98124-4749  
Attn: Steven Shain  
Email: [steven.shain@seattle.gov](mailto:steven.shain@seattle.gov)

With copies to: Ryan, Swanson & Cleveland, PLLC  
1201 Third Avenue, Suite 3400  
Seattle, WA 98101-3034  
Attn: Brian L. Lewis  
Email: [lewis@ryanlaw.com](mailto:lewis@ryanlaw.com)

Seattle City Attorney's Office  
701 5th Avenue, Suite 2050  
Seattle, WA 98104-7097  
Attn: Helaine Honig  
Email: [helaine.honig@seattle.gov](mailto:helaine.honig@seattle.gov)

Purchaser (until 09/01/19): c/o Alexandria Real Estate Equities, Inc.  
385 E. Colorado Boulevard, Suite 299  
Pasadena, CA 91101  
Attention: Corporate Secretary  
Re: Mercer Mega Block  
Email: [ACQLegal@are.com](mailto:ACQLegal@are.com)



Purchaser (after 09/01/19): c/o Alexandria Real Estate Equities, Inc.  
26 North Euclid Avenue  
Pasadena, CA 91101  
Attention: Corporate Secretary  
Re: Mercer Mega Block  
Email: [ACQLegal@are.com](mailto:ACQLegal@are.com)

At all times with a copy to: Mayer Brown LLP  
350 South Grand Avenue, Suite 2500  
Los Angeles, CA 90071  
Attention: Brian Aronson  
Email: [baronson@mayerbrown.com](mailto:baronson@mayerbrown.com)

**12. Representations and Warranties.** The DDA will contain customary representations and warranties from Seller and Purchaser, including the following, subject to such exceptions thereto as the Parties may disclose in the DDA and the schedules attached thereto:

**a. Purchaser Representations and Warranties.**

i. Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware and has the power, right, authority, and legal capacity to execute and deliver this MOU, the Transaction Documents, and the other documents, instruments, certificates, and agreements required to be executed and delivered by it hereunder and to enter into and perform the transactions contemplated hereby, and to carry on the business now conducted or proposed to be conducted by it. Purchaser has taken all limited liability company action required to execute, deliver, and perform this MOU and the transaction, and has caused this MOU to be executed by its duly authorized officers.

ii. Neither the entry into nor the performance of this MOU, nor the entering into of the Transaction Documents, by Purchaser will (A) violate, conflict with, result in a breach under, or constitute a default under, any corporate charter, certificate of incorporation, by-law, partnership agreement, limited liability company agreement, indenture, contract, agreement, permit, judgment, decree, or order to which Purchaser is a party or by which Purchaser is bound, or (B) require the consent of any third party other than as has already been obtained.

iii. There are no judgments, orders or decrees of any kind against Purchaser unpaid or unsatisfied of record or any legal action, suit, or other legal or administrative proceeding pending, threatened, or reasonably anticipated which could be filed before any court or administrative agency which has, or is likely to have, a material adverse effect on the ability of Purchaser to perform its obligations under this MOU.

iv. Purchaser has not filed any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law relating to bankruptcy or insolvency, nor has any such petition been filed against

Purchaser. No general assignment of Purchaser's land or other assets has been made for the benefit of creditors, and no receiver, master, liquidator, or trustee has been appointed for Purchaser or any of its land or other assets. Purchaser is not insolvent and the consummation of the transactions contemplated by this MOU shall not render Purchaser insolvent.

**b. Seller Representations and Warranties.**

i. Seller is a municipal corporation duly formed, validly existing, and in good standing under the laws of the state of Washington and has the power, right, authority, and legal capacity to execute and deliver this MOU and the other documents, instruments, certificates, and agreements required to be executed and delivered by it hereunder and to enter into and perform the transactions contemplated hereby, and to carry on the business proposed to be conducted by it under the terms of this MOU and the Transaction Documents.

ii. Neither the entry into nor the performance of this MOU, nor the entering into of the Transaction Documents, by Seller will (A) violate, conflict with, result in a breach under, or constitute a default under, any agreement, indenture, contract, agreement, permit, judgment, decree, or order to which Seller is a party or by which Seller is bound, or (B) require the consent of any third party other than as has already been obtained.

iii. To Seller's knowledge, after reasonable investigation, and except as otherwise disclosed to Purchaser in writing, there are no judgments, orders, or decrees of any kind against Seller unpaid or unsatisfied of record or any legal action, suit, or other legal or administrative proceeding pending or threatened in writing which has, or is likely to have, a material adverse effect on the ability of Seller to perform its obligations under this MOU. To Seller's knowledge, after reasonable investigation, Seller has not received written notice from any other governmental agency pertaining to any pending or uncured violation of any law or regulation affecting the Property.

iv. To Seller's knowledge, after reasonable investigation, copies of all documents heretofore delivered by Seller to Purchaser are true, correct, and complete copies of such documents in all material respects.

v. Seller is not a party to any purchase and sale agreement or option, right of first refusal, right of first offer or similar agreement to sell or lease all or any portion of the Property (other than this MOU).

vi. Seller has not granted any written leases, licenses, or other rights of occupancy to third parties with respect to the Property, except as set forth in the Permitted Title Exceptions shown on Exhibit F attached hereto.

vii. To Seller's knowledge, after reasonable investigation, Seller has not received any written notice of any pending or threatened governmental condemnation proceedings, and there are no pending or threatened governmental condemnation proceedings, in each case, which would affect the Property or any portion thereof, or any interest therein.



**13. Governing Law and Venue.** This MOU shall be construed and governed according to the laws of the State of Washington. Venue for any action arising out of this MOU shall be in the Superior Court for King County in the State of Washington.

**14. Assignments.** The Transaction Documents will provide that Purchaser may assign its rights under the Transaction Documents to one or more controlled affiliates. Purchaser may not otherwise assign its rights under this MOU or the Transaction Documents except with the prior written consent of Seller, which consent may be given or withheld in Seller's sole discretion.

**15. Tax Deferred Exchange.** The Transaction Documents will provide that either party may convey or receive a conveyance of the Property as part of an IRC Section 1031 Tax Deferred Exchange. Either party may assign all contract rights and obligations hereunder to a qualified intermediary, as part of, and in furtherance of, such tax deferred exchange. In such event, the other party agrees to assist and cooperate in such exchange for the benefit of the exchanging party at no cost, expense or liability to the other party, and further agrees to execute any and all documents (subject to the reasonable approval of the other party's legal counsel) as are reasonably necessary in connection with such exchange at the exchanging party's sole expense. However, the cooperating party shall not be required to take title to any property (other than the Property) as part of any exchange, and the Closing shall not be delayed or extended to accommodate an exchange.

[SIGNATURE PAGES FOLLOW IMMEDIATELY]



SIGNATURE PAGE TO MOU

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed as of the Effective Date.

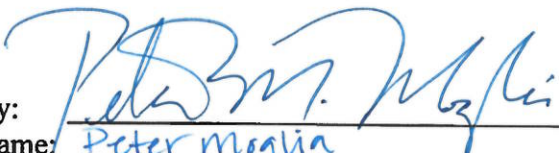
**SELLER:**

**THE CITY OF SEATTLE**

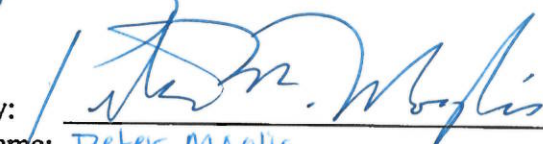
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**PURCHASER:**

**800 MERCER, LLC,**  
a Delaware limited liability company

By:   
Name: Peter Moglia  
Its: Co-Chief Executive Officer and  
Co-Chief Investment Officer

**615 DEXTER, LLC,**  
a Delaware limited liability company

By:   
Name: Peter Moglia  
Its: Co-Chief Executive Officer and  
Co-Chief Investment Officer

## **EXHIBIT A**

### **Legal Description of the Property**

#### **615 Dexter**

The North 52 feet of Lot 3 and all of Lot 4, Block 3, Eden Addition to the City of Seattle, according to the plat thereof recorded in Volume 1 of Plats, Page 61A, in King County, Washington;

Except the East 20 feet thereof condemned in King County Superior Court Cause No. 193437, as provided by Ordinance No. 50890 of the City of Seattle; and

Except that portion thereof condemned in King County Superior Court Cause No. 486551 for street;

Also Lot 5 and the North 52 feet of Lot 6, Block 3, Eden Addition to the City of Seattle, according to the plat thereof recorded in Volume 1 of Plats, Page 61A, in King County, Washington;

Except that portion thereof condemned for Aurora Avenue, in King County Superior Court Cause No. 236360 under Ordinance No. 59719 of the City of Seattle.

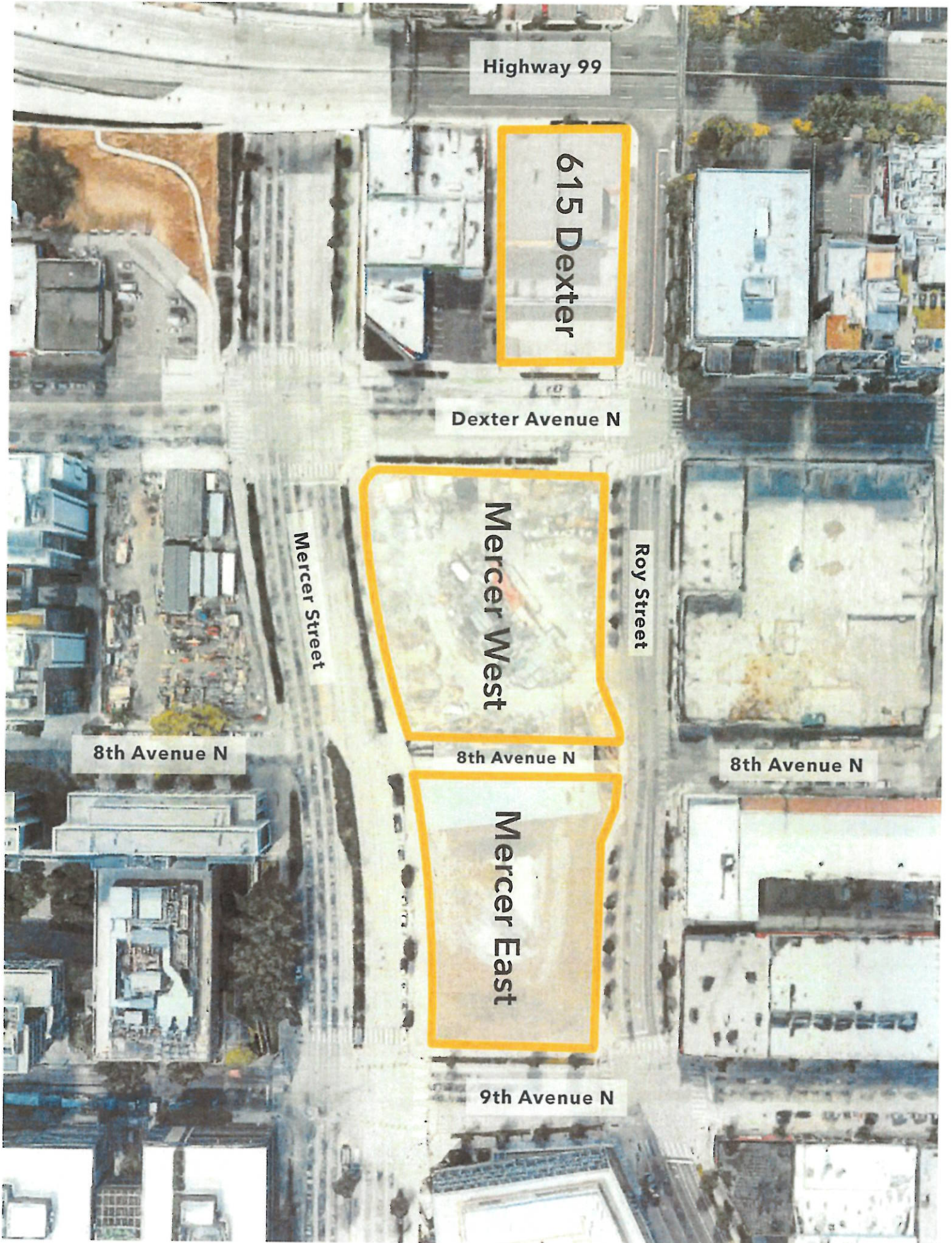
#### **Mercer East and Mercer West**

Parcel B, City of Seattle Lot Boundary Adjustment Number 3033220-LU, recorded under Recording No. 20190524900001.

Parcel A, City of Seattle Lot Boundary Adjustment Number 3033220-LU, recorded under Recording No. 20190524900001.

**EXHIBIT B**  
**Depiction of Property**





## **EXHIBIT C**

### **Form of Public Benefit Housing Covenant**



*When recorded return to:*

City of Seattle Office of Housing  
c/o Stephanie Velasco  
701 Fifth Avenue, Ste. 5700  
P.O. Box 94725  
Seattle, WA 98124-4725

**DRAFT**

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### Housing Use Covenant

<b>Housing Owner:</b>	615 Dexter, LLC
<b>Grantee:</b>	The City of Seattle
<b>Abbreviated Legal Description (Full description on Exhibit A):</b>	Portion of Block 3, Vol 1 of Plats Pg 61A
<b>Assessor's Property Tax Account Number(s):</b>	224900-0120-02

This Housing Use Covenant (this "***Covenant Agreement***") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between 615 DEXTER, LLC a Delaware limited liability company, whose address is c/o Alexandria Real Estate Equities, Inc., 26 North Euclid Avenue, Pasadena, CA 91101 Attention: Corporate Secretary ("**Housing Owner**"), and THE CITY OF SEATTLE, a Washington charter city, whose address is Office of Housing, P.O. Box 94725, Seattle, WA 98124-4725 (the "City").

## RECITALS

Pursuant to that certain \_\_\_\_\_ between \_\_\_\_\_, as buyer, and the City, as seller, dated as of \_\_\_\_\_ (including all amendments thereto, the “**DDA**”), Housing Owner agreed to execute this Covenant Agreement in favor of the City and record the same against the title of the real property legally described in Exhibit A attached hereto (the “**Property**”).

Pursuant to the DDA, the multi-family housing project built upon the Property (the “**Housing Project**”) includes at least one hundred seventy-five (175) housing units that are subject to the terms and conditions of this Covenant Agreement and have been constructed pursuant to the City of Seattle Department of Construction and Inspections (“**SDCI**”) Master Use Permit (“**MUP**”) for Project number \_\_\_\_\_.

NOW THEREFORE, in consideration of the foregoing and the mutual promises in this Covenant Agreement, Housing Owner agrees as follows for the benefit of the City, and grants and conveys to the City and imposes on the Property the covenants and restrictions set forth below:



## AGREEMENT

1. **Definitions.** In addition to any capitalized terms defined elsewhere in this Covenant Agreement, the following terms shall have the respective meanings set forth below for the purposes hereof:
  - A. “Affordable Units” means all residential units constructed as part of the Housing Project and any other residential units on the Property while this Covenant Agreement is in effect that are designated by Housing Owner to be subject to the Use Covenants contained in this Covenant Agreement.
  - B. “AMI” or “Area Median Income” means annual median family income for the Seattle-Bellevue, WA HUD Metro FMR Area, as published from time to time by HUD, with adjustments according to household size in accordance with the factors in the below Table 1 and which adjustments for purposes of determining affordability of Rents shall be based on the average size of Household considered to correspond to the size of the Unit shown in Table 2 (one person for Studio Units, two persons for one Bedroom Units, and one person per additional bedroom beyond one bedroom). For any Household comprised of more than eight persons, the AMI for such Household is computed by adding an additional 8 percent to the 4-person base. The 9-person AMI, for example, is 140% [132% + 8%] of the 4-person base. If HUD ceases to publish the annual median family income for the Seattle-Bellevue, WA HUD Metro FMR Area, then AMI shall mean the comparable figure for King County, Washington, published or reported by an appropriate federal, state or local agency. The below Table 3 is provided for purposes of illustration to calculate several Household size adjustments based on the AMI published by HUD in 2019 for the Seattle-Bellevue, WA HUD Metro FMR Area.

Table 1: Household Size and Percentage Adjustments

<u>1</u> <u>Person</u>	<u>2</u> <u>Person</u>	<u>3</u> <u>Person</u>	<u>4</u> <u>Person</u>	<u>5</u> <u>Person</u>	<u>6</u> <u>Person</u>	<u>7</u> <u>Person</u>	<u>8</u> <u>Person</u>
70%	80%	90%	Base	108%	116%	124%	132%

**Table 2: Housing Unit Size**

<u>Studio Unit</u>	<u>One Bedroom Unit</u>	<u>Two Bedroom Unit</u>	<u>Three Bedroom Unit</u>
1 person	2 person	3 person	4 person

**Table 3: Area Median Income by Household Size for 2019**

<u>1 Person</u>	<u>2 Person</u>	<u>3 Person</u>	<u>4 Person</u>
\$76,020 [\$108,600 × 70%]	\$86,880 [\$108,600 × 80%]	\$97,740 [\$108,600 × 90%]	\$108,600 [Base]

- C. “Annual Income” means the annual income of a Household as determined, unless otherwise approved in writing by the City, in accordance with 24 CFR Section 5.609 or successor provision, and unless otherwise approved in writing by the City shall be calculated in accordance with 24 CFR Section 92.203(d) or successor provision, subject to any interpretations, modifications or assumptions that may be promulgated by HUD. Housing Owner shall follow the requirements in 24 CFR Section 5.617 when making Annual Income determinations of persons with disabilities after their initial occupancy.
- D. “Bedroom Unit” (used in the context of “one-Bedroom Unit”, “two-Bedroom Unit” and “three-Bedroom Unit”)) means a dwelling unit, as defined by SMC 23.84A.008, containing a habitable room that meets the following criteria: (1) gross floor area measures are no less than 70 square feet; (2) wall dimension measures are no less than 7 feet; (3) lighting is provided through an exterior opening in accordance with Section 1205.2.2 of the Seattle Building Code or, in the case of adjoining spaces, in accordance with Section 1205.2.1 of the Seattle Building Code; (4) ventilation is provided through an exterior opening to the outdoors in accordance with Section 1203.5.1 of the Seattle Building Code or, in the case of adjoining spaces, in accordance with Section 1203.5.1.1 of the Seattle Building Code or, in the case of openings below grade, in accordance with Section 1203.5.1.2 of the Seattle Building Code; and (5) walls and exit access doorway(s), consistent with Chapter 2 of the Seattle Building Code, provide a complete separation from the rest of the dwelling unit. Each additional room in the dwelling unit that meets such criteria shall be counted as a bedroom for purposes of calculating housing unit size.
- E. “Commission” means the Washington State Housing Finance Commission.



- F. "Director" means the Director of OH or his or her designee.
- G. "Household Annual Income" means the aggregate Annual Income of all persons residing within the same Unit for any continuous one-month period.
- H. "Household" means one or more tenants of the Housing Project residing within a Unit.
- I. "HUD" means the United States Department of Housing and Urban Development.
- J. "Income-Eligible Household" means a household whose Household Annual Income, at the time of initial occupancy of an Affordable Unit, as determined pursuant to an Income Certification in a form acceptable to the Director, does not exceed sixty percent (60%) of Area Median Income, and thereafter has a Household Annual Income not exceeding one hundred fifty percent (150%) of sixty percent (60%) of Area Median Income based on the most recent Income Certification(s) for the applicable Household.
- K. "Market Rate Units" means all Units within the Housing Project that are not Affordable Units and are not otherwise subject to affordability covenants pursuant to any other covenant now or hereafter agreed to by Housing Owner.
- L. "MFTE Covenant" means a covenant to be executed and recorded against title to the Property pursuant to the City's Multifamily Tax Exemption Program.
- M. "MFTE Units" means thirty-five (35) of the Affordable Units that are designated by Housing Owner to be subject to the MFTE Covenant pursuant to the property tax exemptions provided under Chapter 5.73 SMC.
- N. "OH" means the City of Seattle's Office of Housing and any other department or agency that shall succeed to its functions with respect to low-income housing incentive programs.
- O. "Rent" means all amounts paid by a Household to Housing Owner for the use or occupancy of a Unit and of common areas of the Housing Project, and, to the extent basic utilities are not paid to Housing Owner, a Utility Allowance.
- P. "SMC" or "Code" means the Seattle Municipal Code, as in effect on the date hereof and as may be amended hereafter from time to time.
- Q. "Studio Unit" means a single, independent, unit consisting of one habitable room (excluding kitchen, bath, closets, storage areas, and built-ins), that includes a food

preparation area, a bathroom containing a toilet, sink, and a shower or a bathtub, and a built-in closet.

- R. "Unit" means a dwelling unit, as defined by SMC 23.84A.008, in the Housing Project.
  - S. "Use Covenants" means the covenants set forth in Section 4 of this Covenant Agreement.
  - T. "Utility Allowance" means an allowance approved by the City for basic utilities such as water, sewer, electricity, and gas payable by tenants to utility providers, which unless otherwise approved in writing by the City, shall be equal to the utility allowance allowed by the Commission under Section 42 of the Internal Revenue Code and the regulations pertaining thereto for the type of Unit so long as the Commission provides such an allowance no less frequently than annually. If the Commission does not provide a utility allowance under such provision no less frequently than annually, then the Utility Allowance shall be equal to the utility allowance published from time to time by the Seattle Housing Authority for the type of Unit, or, if the City determines that no reasonably comparable figures are available from the Seattle Housing Authority, the utility allowance shall be such an amount as the City determines is an adequate allowance for basic utilities, to the extent that such items are not paid by Housing Owner. To the extent basic utilities are paid by Housing Owner and not separately recovered from tenants, the Utility Allowance need not be separately accounted for by Housing Owner. The Utility Allowance shall not include any allowance for telephone, internet/wireless, or cable TV services.
2. Affordable Units. All Affordable Units shall be occupied solely by Income-Eligible Households. Affordable Units shall be generally distributed throughout the Housing Project. Affordable Units shall be comparable to the other Units in the Housing Project in terms of the following: status as a dwelling unit, live-work unit, or congregate residence sleeping room; number of bedrooms and bathrooms; net unit area by square feet; access to amenity areas; functionality; and term of Lease. The bedroom and bathroom sizes for Affordable Units shall be generally comparable to the bedroom and bathroom sizes for the other Units in the Housing Project. Details on approximate net rentable square feet, number of bedrooms and baths, location and configuration of the Affordable Units in the Housing Project are shown on Exhibit B. Notwithstanding anything to the contrary contained herein, Market Rate Units with three bedrooms may be converted to smaller units at Housing Owner's discretion as long as the number of Affordable Units with three bedrooms does not change.



3. **Term of Agreement.** This Covenant Agreement, unless extended or terminated by a written document executed by the City and Housing Owner and recorded with King County Records, shall expire and terminate 50 years after the date on which the final certificate of occupancy for the Housing Project is issued. Housing Owner and the City shall execute a recordable notice stating the date of issuance of the final certificate of occupancy for the Housing Project, including a copy of the final certificate of occupancy. Upon the expiration or other termination of this Covenant Agreement, the Director shall promptly, upon request of Housing Owner, execute and acknowledge a recordable notice in form reasonably satisfactory to Housing Owner and the Director confirming that this Covenant Agreement has expired or otherwise terminated.
4. **Use Covenants.** Housing Owner grants, to and for the benefit of the City, and hereby subjects the Property to the conditions, covenants, and restrictions provided for in this Section 4, which are covenants running with the land, binding on Housing Owner, its successors and assigns and its successors-in-interest to the Property. Housing Owner declares its express intent that the following Use Covenants, and the remedies for breach or default in the performance thereof, shall pass to and be binding on Housing Owner's successors in title including any purchaser, grantee, owner or lessee of any portion of the Property (other than residential tenants of individual units) and of any purchaser, grantee, owner or lessee of any portion of the Property and any other person or entity having any right, title or interest in the Property. Housing Owner agrees not to transfer the Property or any portion thereof or interest in the Property or the Housing Project, other than pursuant to Leases, which in the case of the Affordable Units, shall be consistent with this Covenant Agreement, to any successor unless the successor agrees in writing to be bound by the provisions of this Covenant Agreement and Housing Owner provides the Director with a copy of the successor's written assumption of Housing Owner's obligations hereunder prior to the transfer. Transfers of membership interests or changes of members in an entity whose members do not have an interest in specific property of the entity, as provided for in RCW 25.15 or other applicable laws, are not considered to be transfers of an interest in the Property or Project for purposes of this Agreement.
  - A. **Income Requirements.** All Affordable Units shall be occupied solely by Income-Eligible Households, except as otherwise expressly permitted under this Covenant Agreement. For the purposes of this Covenant Agreement, a tenant's initial Annual Income shall be calculated by projecting the Annual Income anticipated to be earned by such tenant over the twelve-month period immediately following the tenant's anticipated date of initial occupancy of the Housing Project, based on the Annual Income of such tenant at the time of income verification, which shall be no more than 6 months prior to the date of initial occupancy. The projected Annual Income so calculated for each tenant of a particular Unit shall be used to compute the Household

Annual Income for the applicable Unit to determine whether the Unit is occupied by an Income-Eligible Household.

(1) Over-Income Households. If, based upon any Income Certification (or recertification of Annual Income), an Affordable Unit is occupied by tenants who do not constitute an Income-Eligible Household, such tenants may continue renting such Affordable Unit for a period of one additional year from the date of Income Certification (or recertification of Annual Income) and such Unit shall continue to be deemed an Affordable Unit for such one-year period. However, in such event, Housing Owner shall not renew or extend the applicable Lease for any period extending beyond one year from the date of the Income Certification (or recertification of Annual Income), unless Housing Owner shall have received a subsequent recertification of Annual Income for the applicable tenant(s) within such one-year period demonstrating that the Unit is occupied by an Income-Eligible Household.

(2) Notice to Over-Income Households. Promptly after receipt of any Income Certification that indicates that an Affordable Unit is not occupied by an Income-Eligible Household, Housing Owner shall provide written notice to the tenants of that Unit of that fact and that such tenants are not required to move at that time. The notice shall state that Housing Owner will not be able to renew or extend the tenant's Lease for any period beyond one year from the date of the applicable Income Certification. The notice must also inform the tenants that if there is a decrease in Household Annual Income or increase in household size, the tenant may provide an updated Income Certification and that the Household might then again be an Income-Eligible Household.

- B. Maximum Initial Monthly Rent. The initial monthly Rent for each of the Affordable Units, together, if applicable, with a Utility Allowance, shall not exceed one-twelfth of 30 percent (30%) of 60 percent (60%) of the then-applicable Area Median Income for the size of the applicable Household. For illustrative purposes only, Exhibit C attached hereto includes a calculation of the maximum initial monthly Rents for the Affordable Units of varying unit sizes based on the 2019 Seattle-Bellevue, WA HUD Metro FMR Area's Median Family Income of \$108,600 for a 4-person Household.
- C. Charges Other than Rent. There shall be no additional charges imposed by Housing Owner for occupancy of Affordable Units other than Rent, security deposits and any fees charged to Income-Eligible Households upon move-in, provided that such security deposits and fees shall be limited to a reasonable level established by the Director by rule, but only to the extent such rule exists as of the date of this Agreement. Notwithstanding anything to the contrary contained herein, tenants



renting Affordable Units may elect to pay Housing Owner or third-party providers for telephone service, internet/wireless or cable TV service and other utilities not included within any Utility Allowance, and such payments shall not be treated as Rent.

- D. Maintenance. Housing Owner shall maintain the Affordable Units and the structure in which they are located in decent and habitable condition, including the provision of adequate basic appliances, for the duration of this Covenant Agreement.
- E. Initial and Annual Income Certifications. Housing Owner shall obtain from each new tenant in an Affordable Unit a certification of household size and income in form acceptable to OH (each, an “*Income Certification*”). Housing Owner shall also examine the income and household size of any Household at any time when Housing Owner receives notice that the tenant’s Income Certification was not complete or accurate. Housing Owner shall obtain Income Certifications or otherwise examine incomes and household sizes for Affordable Units no less frequently than on an annual basis. Housing Owner shall maintain all Income Certifications and documentation obtained under this subsection on file for at least five (5) years after the same are provided to Housing Owner, and Housing Owner shall promptly make the Income Certifications and documentation available to OH for inspection and copying upon request.
- F. Reporting. For so long as this Covenant Agreement remains in effect, Housing Owner shall submit to OH an annual written report stating the monthly Rents charged for each Affordable Unit during the prior calendar year and the household size and Annual Household Income for each Household occupying an Affordable Unit. The Director may require documentation of Rents, copies of Income Certifications, and documentation supporting determinations of Annual Household Income (for example, employer’s verification or check stubs).
- G. Subleases/Assignments. Housing Owner shall not permit tenants renting Affordable Units to sublease or otherwise assign their interest in any Affordable Unit and each Lease shall contain a restriction on sublease and assignment consistent with this covenant.
- H. Lease Agreement and Information to Tenants. Housing Owner shall prepare a lease or rental agreement (each a “*Lease*”) for all tenants who occupy Affordable Units in accordance with the requirements in this Covenant Agreement and applicable law. The Lease shall, at a minimum: (1) specify the maximum monthly Rent that may be charged for the Affordable Unit (based upon the initial household size); (2) state that information regarding the terms of this Covenant Agreement may be obtained from

OH; and (3) comply with all requirements in this Covenant Agreement and applicable law. To the extent that other agreements or restrictions on the Property or Project require Rents lower than those permitted under this Covenant Agreement, the Lease shall state the maximum monthly Rent under those agreements or restrictions in lieu of the maximum monthly Rents allowed by this Covenant Agreement. With respect to the MFTE Units, to the extent the MFTE Covenant allows Rents higher than those permitted under this Covenant Agreement, the Lease shall state the maximum monthly Rent under the MFTE Covenant in lieu of the maximum monthly Rent allowed by this Covenant Agreement until such time as the MFTE Covenant expires or is otherwise terminated.

- I. Insurance; Loss or Damage to Affordable Units. Housing Owner shall keep the Housing Project insured by an insurance company licensed to do business in the state of Washington and reasonably acceptable to the City, against loss by fire and other hazards included with "broad form coverage," in the amount of 100 percent (100%) of the replacement value of the Housing Project for the entire term of this Covenant Agreement, unless otherwise agreed to in writing by the City and Housing Owner. Housing Owner shall promptly provide to OH evidence satisfactory to OH of compliance with this insurance requirement upon OH's request.
- J. Segregation of Ownership. Housing Owner, its successors or assigns, may segregate ownership of any portion of the Housing Project in any manner permitted by law, provided that the segregation does not restrict Housing Owner's ability to comply with this Covenant Agreement.
- K. Other Agreements. If a lower maximum Rent or income eligibility limit, or both, than that permitted by this Covenant Agreement is required by any other agreement applicable to any of the Affordable Units, then that lower maximum Rent or income eligibility limit, or both, as applicable, shall apply to the Affordable Units.
- L. No Subsidies. Housing Owner agrees not to seek or accept any subsidies related to the Affordable Units. Housing Owner represents, warrants and agrees that Housing Owner has not received, is not receiving and will not receive with respect to the Affordable Units any charitable contributions or public subsidies for housing development or operation, including, but not limited to, tax exempt bond financing, tax credits, federal loans or grants, City of Seattle housing loans or grants, county housing funds, and State of Washington housing funds. For purposes of this Covenant Agreement, the qualification for and use of property tax exemptions under Chapter 5.73 SMC, or any other program implemented under Chapter 84.14 RCW ("*MFTE*"), does not constitute a subsidy.



- M. Substitution of Affordable Units. Housing Owner may substitute, for any Affordable Unit that is vacant or occupied by a Household that is no longer an Income-Eligible Household, a comparable vacant Unit in the Housing Project (as reasonably determined by OH taking into account floor area, number of bedrooms and other factors), after written notification to and approval by OH, provided that the Unit becoming an Affordable Unit complies fully with the terms of this Covenant Agreement.
- N. Limitation on Rent Increases. Housing Owner shall be allowed to increase Rent annually for existing tenants of Affordable Units by up to the greater of: (i) two percent (2%) or (ii) the annual percentage increase of AMI, but in no event more than five percent (5%); provided that the foregoing limitation shall not apply to the Rent at initial occupancy for new tenants, which shall be determined according to Section 4.B, and shall not apply to the MFTE Units for so long as the MFTE Covenant remains in effect. Upon Housing Owner's request, the Director may, in his or her sole discretion, approve a percentage increase in Rent on one or more Affordable Units exceeding the foregoing limitation if Housing Owner provides evidence acceptable to the Director that the Housing Project has experienced expenses that would justify such a larger Rent increase.
5. Subordination of Use Covenants to MFTE Covenant. For so long as they are designated as such, the MFTE Units shall be burdened by the MFTE Covenant and this Covenant Agreement, but City agrees that (i) the terms and conditions of this Covenant Agreement shall be subordinate to the terms and conditions of the MFTE Covenant for the term of the MFTE Covenant and, (ii) to the extent there is any conflict between the MFTE Covenant and this Covenant Agreement as to the MFTE Housing Units, the terms of the MFTE Covenant shall control during the term of the MFTE Covenant. For avoidance of doubt, to the extent the MFTE Covenant allows Rents higher than those permitted under this Covenant Agreement, the MFTE Units shall be subject solely to the maximum monthly Rent under the MFTE Covenant during the term of the MFTE Covenant. Upon expiration or earlier termination of the MFTE Covenant, any MFTE Units then occupied shall be deemed Affordable Units under this Covenant Agreement and continue to be deemed Affordable Units for so long as such Units remain occupied by Income-Eligible Households.
6. Access License. Housing Owner grants to the City a license, subject to existing laws, rules, regulations, matters of record, and the rights of residential tenants in occupancy, to enter the Housing Project during normal business hours upon not less than seventy-two (72) hours' prior notice to Housing Owner in order to inspect the Housing Project and to inspect such records as are necessary to determine compliance with this Covenant

Agreement, and to exercise any other rights or remedies that the City may have under this Covenant Agreement. This access license shall terminate upon expiration or termination of this Covenant Agreement.

7. Default and Remedies.

- A. **Excess Rents.** If Rent for any Affordable Unit is charged in excess of the amounts permitted under this Covenant Agreement, Housing Owner agrees to refund those Rents charged in excess, with interest at twelve percent (12%) per annum, to those tenants overcharged. The refund shall be made promptly upon receiving notice of the overcharge from the City, and Housing Owner hereby waives any statute of limitations defense to enforcement of the foregoing covenant.
- B. **Other Violations.** In the event of any breach or default by Housing Owner in the performance of its obligations and covenants under this Covenant Agreement other than the collection of excess Rent, Housing Owner shall have 30 days from the date of receipt of notice thereof to cure the breach or default. Failure by Housing Owner to cure within 30 days shall constitute an *“Event of Default”* by Housing Owner under this Covenant Agreement. Notwithstanding the foregoing, if the breach or default is of such a nature that it may not be practicably cured within 30 days by Housing Owner, the City shall not exercise its remedies under this Covenant Agreement so long as Housing Owner commences cure of such breach or default within the 30-day period and diligently pursues the cure to completion.
- C. **Remedies.** If there is an Event of Default by Housing Owner under this Covenant Agreement, the City shall be entitled to pursue all remedies available at law or equity including, without limitation, specific performance, preliminary and permanent injunctive relief, appointment of a receiver on an interim or permanent basis, monetary damages, restitution, and recovery of all costs and attorneys’ fees incurred by the City in enforcing this Covenant Agreement, including the reasonable value of services provided by attorneys who are City employees and including the reasonable value of any other services provided by City employees.
- D. **No Waiver.** No waiver of any breach or violation of this Covenant Agreement shall be binding unless made in writing by the City and no waiver or delay in enforcing the provisions of this Covenant Agreement as to any breach or violation shall impair, damage, or waive the right of the City to obtain relief or recover for the continuation or repetition of any breach or violation or any similar breach or violation of this Covenant Agreement at any later time.
- E. **Nothing in this Covenant Agreement limits the authority of the City to take enforcement action under the Code.**



8. Damage and Destruction of Housing Project.

(a) **Partial Damage.** Housing Owner shall notify OH in writing promptly upon the occurrence of any material damage to the Housing Project. If less than thirty-five percent (35%) of the gross floor area of the Housing Project is rendered uninhabitable as a result of damage or destruction resulting from a casualty event ("**Partial Damage**"), Housing Owner shall commence restoration of the Partial Damage within a reasonable time after the occurrence of the casualty event, diligently pursue the restoration work to completion and substantially complete the restoration work within three hundred sixty-five (365) days after the occurrence of the casualty event so that the damaged portion of the Housing Project is restored to habitable use. If Housing Owner determines that the Partial Damage cannot be repaired and restored such that the damaged portion of the Housing Project may be restored to habitable use within such three hundred sixty-five (365) period, Housing Owner shall communicate such determination to OH, shall thereafter continue to diligently pursue completion of the restoration work and keep OH reasonably informed of the progress of the restoration and, in such event, the term of this Covenant Agreement shall be deemed suspended for that period of time for which the restoration exceeds three hundred sixty-five (365) days. If Partial Damage occurs during the last three (3) years of the term of this Covenant Agreement and such damage will require more than one hundred eighty (180) days to repair, as reasonably estimated by Housing Owner and its restoration contractor, then Housing Owner may elect to terminate this Covenant Agreement and, in connection therewith, upon giving notice to the City of such election, shall pay to the City a sum of money (the "**Termination Fee**") calculated as follows:

- a. The then applicable average monthly Rent for the Affordable Units and average monthly Rent for the Market Rate Units shall each be calculated, on a per square foot basis.
- b. The difference between the average monthly Rent for Affordable Units and the average monthly Rent for Market Rate Units shall then be calculated, on a per square foot basis (the "**Rent Differential**").
- c. The Termination Fee shall be the result that is obtained by multiplying the Rent Differential by the aggregate square footage of the Affordable Units and multiplying that result by the number of full calendar months then remaining in the term of this Covenant Agreement, and shall then be discounted to net present value using a six percent (6%) annual discount rate.

(b) **Substantial or Total Destruction.** If greater than thirty-five percent (35%) of the gross floor area of the Housing Project is rendered uninhabitable as a result of damage or destruction resulting from a casualty event ("**Major Damage**"), Housing Owner may elect, by written notice delivered to OH within sixty (60) days after the occurrence of the casualty event, to do either of the following: (i) restore the Major Damage pursuant to the provisions set forth above governing Partial Damage, except that the three hundred sixty-five (365) day period described above shall be increased to five hundred (500) days, or (ii) terminate this Covenant Agreement (except as to any obligations of Housing Owner, if any, which expressly survive expiration or termination of this Housing Covenant) and demolish the Housing Project. In the event that Housing Owner elects to terminate this Covenant Agreement and demolish the Housing Project pursuant to the foregoing clause (ii), Housing Owner shall, upon giving notice to the City of such election, pay the Termination Fee to the City.

(d) Any dispute arising under this Section 8 shall be resolved as follows:

(i) **Mandatory Mediation.** In the event there is any dispute arising under this Section 8 that cannot be resolved without intervention, either Housing Owner or the City may give notice (the "**ADR Demand**") to the other party demanding that the dispute be submitted to mediation and arbitration pursuant to this subsection 8(d). All parties to the dispute shall then participate in a nonbinding mediation for 45 days after the ADR Demand. Housing Owner and the City shall mutually select the mediator through a commercial mediation service operating in the Seattle, Washington, metropolitan area, with substantial experience resolving legal disputes in the commercial real estate industry. If the parties cannot agree upon a mediator, the mediator shall be selected by the Presiding Judge of the King County Superior Court. The charges of the mediator shall be shared equally by the parties. All information exchanged or presented to the mediator, whether in oral, written or other form, and the results of the mediation, shall be confidential. If the mediation is not successful, either party may submit the dispute for resolution by binding arbitration conducted pursuant to the arbitration provisions below. The parties confirm that by agreeing to this alternate dispute resolution process, they intend to give up their right to have any dispute arising under this Section 8 decided in court by a judge or jury.

(ii) **Binding Arbitration.** If binding arbitration is required to resolve a dispute, it shall be conducted in Seattle, in accordance with the American Arbitration Association (AAA) commercial arbitration rules (but the dispute shall not be administered by the AAA). If any party demands a total award greater than \$500,000, there shall be three (3)



neutral arbitrators. Otherwise, there shall be one (1) neutral arbitrator. If the parties cannot agree on the selection of the arbitrator(s) within ten (10) days after conclusion of the 45-day mediation period described above, the arbitrator(s) shall be selected by the administrator of the American Arbitration Association (AAA) office in Seattle from its Large Complex Case Panel or from any group of arbitrators with equivalent professional credentials as determined by the administrator. Each arbitrator shall be an attorney with at least fifteen (15) years' experience in commercial or real estate law in King County. The arbitrator(s) shall adjudicate the dispute in accordance with the procedures set forth below, including the determination of any dispute over whether the dispute is subject to binding arbitration under this subsection 8(d). All statutes of limitations which would otherwise be applicable shall apply to any arbitration proceeding hereunder, except that such statutes of limitations shall be tolled from the date of service of the ADR Demand described above.

(iii) Arbitration Hearing Procedure. The arbitrator(s) shall take such steps as may be necessary to hold the arbitration hearing within ninety (90) days of the appointment of the arbitrator(s), conclude the hearing within three (3) days and issue its decision not later than fourteen (14) calendar days after the hearing. The arbitrator(s) may for good cause permit reasonable extensions or delays. The arbitrator(s) shall issue a written decision stating the award for each claim involved in the dispute. In making the decision and award, the arbitrator(s) shall apply applicable substantive law. Absent fraud, collusion or willful misconduct by an arbitrator, the award shall be final, and judgment on the award may be entered in any court having jurisdiction thereof. The arbitrator(s) may award injunctive relief or any other remedy available from a judge, order the joinder of parties, or consolidate the arbitration with any other proceeding involving common issues of law or fact or to promote judicial economy. The parties to the dispute shall share equally the cost of the arbitrator(s). The arbitrator(s) shall not have the power to award punitive or exemplary damages. If the hearing is before a panel of three (3) arbitrators, the decision of any two arbitrators shall be the decision of the panel. All information exchanged or presented to the arbitrator(s), whether in oral, written or other form, and the results of the arbitration, shall be confidential.

9. No Demolition or Change in Use of Housing Project. During the term of this Covenant Agreement, Housing Owner shall not voluntarily demolish all or any substantial portion of the Housing Project (except as permitted in Section 8 above with respect to casualty loss constituting Major Damage) or materially change the use of the Housing Project without the Director's prior consent which may be granted or withheld in the Director's sole discretion.

10. **Priority.** Housing Owner represents and warrants that there are no monetary liens on the Property or Project with priority over this Covenant Agreement except for Property taxes not yet delinquent.
11. **Representations and Warranties, and No Conflict with other Documents.** Housing Owner represents and warrants to City that it has the full power and authority to enter into and perform this Covenant Agreement, has taken all limited liability action necessary to authorize, execute, deliver and perform its obligations under this Covenant Agreement, that this Covenant Agreement represents the valid, binding obligation of Housing Owner and is enforceable in accordance with its terms, and that Housing Owner has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to the provisions of this Covenant Agreement.
12. **Attorneys' Fees.** If legal action is commenced involving any provision of this Covenant Agreement, including without limitation arbitration, bankruptcy, trial or appellate proceedings, reasonable attorneys' fees and costs shall be awarded to the substantially prevailing party.
13. **Choice of Law, Jurisdiction, and Venue.** This Covenant Agreement shall be construed and enforced in accordance with and governed by the laws of the state of Washington. Housing Owner and the City consent to the jurisdiction of the courts of the state of Washington and agree that venue of any action arising under this Covenant Agreement shall be exclusively in King County, Washington.
14. **Captions.** The section and subsection captions used in this Covenant Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions in this Covenant Agreement.
15. **Genders.** The use of any gender in this Covenant Agreement shall be deemed to include all other genders, and the use of the singular in this Covenant Agreement shall be deemed to include the plural and vice versa, wherever appropriate.
16. **Counterparts, Effectiveness, Recordation, Amendments.** This Covenant Agreement may be executed in two or more counterparts, each of which shall constitute an original. This Covenant Agreement shall be effective upon recording. The provisions in this Covenant Agreement shall not be amended, revised or terminated, other than by the express terms of this Covenant Agreement and by an instrument in writing that is executed by the Director and Housing Owner or their successors and assigns, and recorded with King County Records. Amendments to this Covenant Agreement that affect the term hereof, the number of Units that must be Affordable Units or the definition of Income-Eligible Household shall require approval by ordinance.



17. **Severability.** The invalidity of any clause, part or provision of this Covenant Agreement shall not affect the validity of the remaining portions of this Covenant Agreement.
18. **Delivery of Notice.** Any notice or other document required or permitted by this Covenant Agreement to be delivered to a party shall be deemed delivered on the day personally delivered or delivered by overnight carrier, or shall be deemed delivered three days after mailing. If the delivery day after mailing falls on a Saturday, Sunday, or City of Seattle holiday, or if personal delivery is made after normal working hours, then the delivery day shall be determined to be the next day that is not a Saturday, Sunday, or City of Seattle holiday.

Delivery to the Director, OH, and to the City shall be made to:

City of Seattle Office of Housing  
Attention: Director  
700 5<sup>th</sup> Avenue, Suite 5700  
P.O. Box 94725  
Seattle, WA 98124-4725

or to such other address or department as is later specified by the City by written notice to Housing Owner.

Delivery to Housing Owner should be made to:

c/o Alexandria Real Estate Equities, Inc.  
26 North Euclid Avenue  
Pasadena, CA 91101  
Attention: Corporate Secretary  
Re: Mercer Mega Block  
Email: ACQLegal@are.com

or to other such address as is later specified by Housing Owner by written notice to the City.

19. **No Assumption of Obligations by City.** Nothing in this Covenant Agreement shall be construed to impose on the City any obligation or liability not expressly provided herein. This Covenant Agreement is not intended to create any duties on the part of the City to any tenant or occupant of the Property, nor to confer on any tenant or occupant of the

Property or any other person any right or claim against the City or its agents or employees in the event of any action or failure to act by the City hereunder.

20. **Qualified Operator.** Housing Owner shall cause the Housing Project to be operated at all times during the term of this Covenant Agreement by a qualified property manager or operator with experience in the ownership, management and/or operation of multi-family affordable housing projects of similar size, scope and unit mix to that of the Housing Project.
21. **Entire Agreement.** This Covenant Agreement, including any exhibits, attachments and references to documents in this Covenant Agreement, contains the entire agreement and understanding between Housing Owner and the City with respect to the Use Covenants.

*[Signatures on following page]*



IN WITNESS WHEREOF, Housing Owner has executed this Covenant Agreement as of the date set forth above.

615 Dexter LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the City has accepted this Covenant Agreement as of the date set forth above.

THE CITY OF SEATTLE,  
a Washington charter city,

By: \_\_\_\_\_  
Steve Walker  
Its: Director, Office of Housing

Exhibit A: Legal Description  
Exhibit B: Affordable Units by Unit Type and Floor Area  
Exhibit C: Illustrative Calculation of Maximum Initial Monthly Rents (for Affordable Units)

## HOUSING OWNER/HOUSING OWNER ACKNOWLEDGEMENT

STATE OF WASHINGTON }  
COUNTY OF KING } ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me personally known or proven on the basis of satisfactory evidence to be the \_\_\_\_\_ of 615 Dexter LLC, the Delaware limited liability company that executed the within and foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of the party for the uses and purposes therein mentioned, and on oath stated that the executing party was authorized to execute the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL ON THE DATE WRITTEN ABOVE IN THIS  
CERTIFICATE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

NOTARY PUBLIC in and for the State of  
Washington, residing at

\_\_\_\_\_  
My Commission Expires  
\_\_\_\_\_



## GRANTEE/CITY ACKNOWLEDGEMENT

STATE OF WASHINGTON }  
COUNTY OF KING } ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared Steve Walker, to me personally known or proven on the basis of satisfactory evidence to be the Director of the Office of Housing of the City of Seattle, the municipal corporation that executed the within and foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of the party for the uses and purposes therein mentioned, and on oath stated that the executing party was authorized to execute the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL ON THE DATE WRITTEN ABOVE IN THIS  
CERTIFICATE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

NOTARY PUBLIC in and for the State of  
Washington, residing at

\_\_\_\_\_  
My Commission Expires

## **EXHIBIT A**

### **Legal Description**

The North 52 feet of Lot 3 and all of Lot 4, Block 3, Eden Addition to the City of Seattle, according to the plat thereof recorded in Volume 1 of Plats, Page 61A, in King County, Washington;

Except the East 20 feet thereof condemned in King County Superior Court Cause No. 193437, as provided by Ordinance No. 50890 of the City of Seattle; and

Except that portion thereof condemned in King County Superior Court Cause No. 486551 for street;

Also Lot 5 and the North 52 feet of Lot 6, Block 3, Eden Addition to the City of Seattle, according to the plat thereof recorded in Volume 1 of Plats, Page 61A, in King County, Washington;

Except that portion thereof condemned for Aurora Avenue, in King County Superior Court Cause No. 236360 under Ordinance No. 59719 of the City of Seattle.



## EXHIBIT B

### Affordable Units by Unit Type and Floor Area

PROJECT UNIT MIX SUMMARY											
BR	BA	Owner Floor Plan ID	OH Unit Type	FLOOR:	BELOW- GRADE	1	2	3	4	5	# of units - Total Net Unit Area (SF)
				Total Units							-
				Total Net Unit Area (SF)							-
				Designated Units							-
				Designated Net Unit Area (SF)							-
				Total Units							-
				Total Net Unit Area (SF)							-
				Designated Units							-
				Designated Net Unit Area (SF)							-
				Total Units							-
				Total Net Unit Area (SF)							-
				Designated Units							-
				Designated Net Unit Area (SF)							-
				Total Units							-
				Total Net Unit Area (SF)							-
				Designated Units							-
				Designated Net Unit Area (SF)							-
TOTAL Units:					-	-	-	-	-	-	-
TOTAL Net Unit Area (SF):					-	-	-	-	-	-	-
TOTAL Designated Affordable Units:					-	-	-	-	-	-	-
TOTAL Designated Net Unit Area (SF):					-	-	-	-	-	-	-

**EXHIBIT B**  
**(Continued)**



## EXHIBIT C

### Illustrative Calculation of Maximum Initial Monthly Rents (for Affordable Units)

The below table is provided for purposes of illustrating the maximum initial monthly Rents for Studio Units, one Bedroom Units, two Bedroom Units and three Bedroom Units based on the 2019 Seattle-Bellevue, WA HUD Metro FMR Area's Median Family Income of \$108,600 for a 4-person household.

	<u>Studio Unit</u>	<u>One Bedroom Unit</u>	<u>Two Bedroom Unit</u>	<u>Three Bedroom Unit</u>
Maximum Initial Monthly Rent	<b>\$1,140.30</b> = $(30\% \times \$45,612 \text{ [60\% of Median Income for 1 Person]}) \div 12$	<b>\$1,303.20</b> = $(30\% \times \$52,128 \text{ [60\% of Median Income for 2 Persons]}) \div 12$	<b>\$1,466.10</b> = $(30\% \times \$58,644 \text{ [60\% of Median Income for 3 Persons]}) \div 12$	<b>\$1,629.00</b> = $(30\% \times \$65,160 \text{ [60\% of Median Income for 4 Persons]}) \div 12$
60% of Median Income	<b>\$45,612</b> = $60\% \times (\$108,600 \times 70\%)$	<b>\$52,128</b> = $60\% \times (\$108,600 \times 80\%)$	<b>\$58,644</b> = $60\% \times (\$108,600 \times 90\%)$	<b>\$65,160</b> = $60\% \times (\$108,600)$

## **EXHIBIT D**

### **Form of MFTE Covenant**

## MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION AGREEMENT

THIS MULTIFAMILY HOUSING LIMITED PROPERTY TAX EXEMPTION AGREEMENT ("Agreement") is entered into on the date signed below between OWNERSHIP ENTITY NAME, a STATE OF INCORPORATION TYPE OF OWNERSHIP ENTITY, referred to as "Owner," and The City of Seattle, a Washington municipal corporation, referred to as "City".

### Recitals.

1. Owner is the property owner of record of real property at ADDRESS, legally described as follows (the "Property"):  
  
*Insert FULL LEGAL DESCRIPTION*; and
2. Owner applied for a limited property tax exemption as provided for in RCW Chapter 84.14 and SMC Chapter 5.73 for Multifamily Housing as part of a MIXED-USE or RESIDENTIAL-ONLY development on the Property in the Seattle Residential Targeted Area, and the Director of Housing ("Director") has approved the application; and
3. Owner has submitted to the City Office of Housing site plans and floor plans ("Preliminary Plans"), which are referenced in the Application (defined below) for the Multifamily Housing located at the address above in Seattle, Washington, that is permitted or proposed under Seattle Department of Construction and Inspections Project No. insert MUP number (the "Project"); and
4. AN OR NO existing rental housing building that contained four or more occupied Dwelling Units was demolished on the Property within eighteen (18) months prior to Owner's submission of its application for limited property tax exemption; and
5. The City has determined that the Multifamily Housing will, if completed, occupied, and owned as proposed, satisfy the requirements for a Final Certificate of Tax Exemption; and
6. References to the Seattle Municipal Code (SMC) mean the provisions in effect as of Insert vesting date per SDCI under SMC Chapter 23.76.

NOW, THEREFORE, in consideration of the mutual promises herein, City and Owner do mutually agree as follows:



1. Definitions.

Unless otherwise expressly provided herein, the terms defined above shall have the meanings set forth above, and the following terms shall have the respective meanings set forth below for the purposes hereof:

"Affordable Rent" means monthly rent, including tenant-paid utilities and any mandatory recurring fees required as a condition of tenancy, which does not exceed 30 percent of the monthly imputed Median Income designated by Chapter 5.73 for qualifying units.

"Affordable Unit" means a unit that is rented at an Affordable Rent to an Income Eligible Occupant.

"Application" means the application submitted to the City Office of Housing by Owner for a limited property tax exemption as provided for in RCW Chapter 84.14 RCW and SMC Chapter 5.73 SMC for Multifamily Housing on the Property, including any attachments and documents incorporated by reference, and with any amendments approved in writing by the Director.

"Annual Income" means the annual income of a Family as determined, unless otherwise approved in writing by the City, in accordance with 24 C.F.R Section 5.609 or successor provision. The Owner shall follow the requirements in 24 C.F.R Section 5.617 when making subsequent Annual Income determinations of persons with disabilities after their initial occupancy.

"Bedroom" means a habitable room in a Dwelling Unit that meets the following criteria: (1) gross floor area measures are no less than 70 square feet; (2) wall dimension measures are no less than 7 feet; (3) lighting is provided through an exterior opening in accordance with Section 1205.2.2 of the Seattle Building Code or, in the case of adjoining spaces, in accordance with Section 1205.2.1 of the Seattle Building Code; (4) ventilation is provided through an exterior opening to the outdoors in accordance with Section 1203.5.1 of the Seattle Building Code or, in the case of adjoining spaces, in accordance with Section 1203.5.1.1 of the Seattle Building Code or, in the case of openings below grade, in accordance with Section 1203.5.1.2 of the Seattle Building Code; and (5) walls and exit access doorway(s), consistent with Chapter 2 of the Seattle Building Code, provide a complete separation from the rest of the Dwelling Unit.

"Compliance Period" means the period beginning with the application for Final Certificate of Tax Exemption and ending on December 31 of the twelfth year of tax

exemption, during which time Affordable Units must be occupied by Income Eligible Occupants.

"Congregate Residence" shall be as defined according to SMC 23.84A.006.

"Dwelling Unit" shall be defined according to SMC 23.84A.008.

"Family" has the meaning set forth in 24 C.F.R Section 5.403 or successor provision and includes an individual person.

"Income Eligible Occupant" means a Family with an Annual Income, at initial occupancy of an Affordable Unit, that is no greater than the applicable percentage of Median Income, by unit type, according to Table B of this Agreement. A Family shall continue to be an Income Eligible Occupant as long as the Family's Annual Income does not exceed 150 percent of the maximum percentage of Median Income upon recertification.

"Median Income" means median family income for the Seattle area, as published or imputed based on data published from time to time by HUD for the Section 8 Program or other published HUD median family income data for more than one area that includes Seattle, with adjustments according to household size in a manner determined at the sole discretion of the Director of Housing.

"Multifamily Housing" means a building or buildings, including associated housing improvements, having four or more Dwelling Units in each building, or four or more housing units in a Congregate Residence, designed for Permanent Residential Occupancy, either rental or owner-occupied, resulting from new construction or rehabilitation or conversion of vacant, underutilized, or substandard buildings.

"Permanent Residential Occupancy" means Multifamily Housing that provides either rental or owner occupancy for a period of at least one month. This excludes hotels and motels that predominately offer rental accommodation on a daily or weekly basis.

"Third-Party Verification" means independent verification of income by contacting the individual income source(s) supplied by the Family.

1. Conditional Certificate of Acceptance of Tax Exemption.

Subject to Owner's execution of this Agreement, City agrees to issue a Conditional Certificate of Acceptance of Tax Exemption ("Conditional Certificate"), which will expire three (3) years from the date of approval of the Application unless extended by the Director as provided in SMC 5.73.070. Owner understands and agrees that this Agreement and the Conditional Certificate pertain to rental housing. In the event that individual residential units



within the Multifamily Housing are sold, this Agreement will automatically terminate, and any Conditional Certificate issued pursuant to this Agreement is void. For purposes of this Agreement, a sale will be deemed to have occurred when an instrument transferring title to an occupant or proposed occupant of an individual residential unit is recorded.

2. Agreement to Construct Multifamily Housing.

a. Owner agrees to construct the Project on the Property, including the Affordable Units, substantially as described in the Preliminary Plans, including without limitation the identification of Affordable Units made on the Preliminary Plans or by reference to them in the Application, with only such changes, if any, as are permitted under this Agreement. The Owner may make changes required to comply with applicable codes and ordinances, including results of the design review process, but only if: (1) the Owner submits the information described in subsection 2.d below when required under that subsection regarding all changes that affect any aspects of the Multifamily Housing described in that subsection; (2) the Owner makes any adjustments to the changes that such Director requires as conditions to approval; and (3) such Director approves the changes in writing. If the Multifamily Housing as constructed or the final designations of Affordable Units reflect any changes that are not approved by the Director of Housing under this Section, then the Final Certificate of Tax Exemption may be denied. In no event shall Owner provide fewer than four (4) new Dwelling Units or housing units in a Congregate Residence designed for Permanent Residential Occupancy as part of the Project. At least fifty percent (50%) of the space in each building of the Project must be devoted to Permanent Residential Occupancy.

b. Owner agrees to comply with all applicable zoning requirements, land use regulations, and building and housing code requirements contained or incorporated in SMC Titles 22, 23, and 25. Owner agrees to comply with all Office of Housing affirmative marketing requirements for affordable housing incentive programs. Owner further agrees that execution of this Agreement by the Director of Housing, or issuance of a Conditional Certificate by the City pursuant to SMC Chapter 5.73 in no way constitutes approval of proposed improvements on the Property with respect to applicable provisions contained or incorporated in SMC Titles 22, 23, and 25 or obligates the City to approve proposed improvements.

c. Owner agrees that the Multifamily Housing will be completed within three (3) years from the date of approval, unless extended in writing by the Director of Housing for cause as provided in SMC 5.73.070.

d. Owner acknowledges that the Director of Housing approved the Application based on the Preliminary Plans and the designation by the Owner of Affordable Units according to the Preliminary Plans. If Owner desires to make any changes in the proposed Multifamily Housing that affect the number of units, mix of unit types, unit sizes or numbers



of bedrooms, unit configurations or layouts, or the proposed location or identification numbers of Affordable Units, or any other features or characteristics of units relevant under this Agreement, then no later than 120 days prior to submitting a request for a Final Certificate of Tax Exemption (unless the Director of Housing, in his or her discretion, allows a shorter period), Owner shall submit all proposed changes to the Office of Housing and provide a comprehensive report with revised plans showing all residential units in the Project, including but not limited to unit identification numbers, unit types, unit square footage and layouts, noting any changes from the Preliminary Plans, as well as the proposed selection of Affordable Units. Within 14 days of receipt of such report, the City Office of Housing may require Owner to supply any other information relevant to evaluating the requested changes. Within 30 days after receipt of all information required under this subsection, the Director of Housing shall determine whether and to what extent the changes would be consistent with the terms of this Agreement, the Application and SMC Ch. 5.73, and shall notify the Owner that the proposed changes are approved in full or with exceptions, and of any adjustments required as a condition to approval, or that they are disapproved in full. If the Director of Housing does not provide notice, the changes are disapproved in full.

e. Time is of the essence of this Section 2.

3. Agreement to Provide Affordable Housing.

a. Owner agrees that, from the date of application for the Final Certificate of Tax Exemption, and for the entire period of time for which the Multifamily Housing receives a tax exemption, a minimum number of Dwelling Units or housing units in a Congregate Residence in the Project shall be Affordable Units. If the Project contains at least the minimum number of Dwelling Units with two or more Bedrooms as shown in Table A for 5.73.040.B, a minimum of 20 percent of all Dwelling Units in the Project shall be Affordable Units. If the Project contains fewer than the minimum number of Dwelling Units with two or more Bedrooms as shown in Table A for 5.73.040.B, a minimum of 25 percent of all Dwelling Units and/or housing units in a Congregate Residence in the Project shall be Affordable Units.

<b>Table A</b>	
<b>Total Dwelling and/or Congregate Residence Units and Corresponding Minimum Units with Two or More Bedrooms</b>	
<b>Project Size (Total Units)</b>	<b>Minimum Dwelling Units with Two or More Bedrooms</b>
Less than or equal to 100	4

101 to 150	6
151 to 200	8
201 to 250	10
251 to 300	12
More than 300	12, plus 2 for every additional 50 Dwelling Units or housing units in Congregate Residence

<b>Table B</b>	
<b>Maximum Annual Income of Income Eligible Occupant by Unit Type</b>	
<b>Unit Type</b>	<b>Maximum Annual Income (% of Median Income)</b>
Units in Congregate Residence	40%
Small Efficiency Dwelling Unit	40%
Studio	65%
One-Bedroom	75%
Two-Bedroom	85%
Three-Bedroom and larger	90%

IF REPLACEMENT UNITS ARE REQUIRED: (Number) additional unit(s) shall be Affordable Units for a Family with a maximum Annual Incomes at or below fifty percent (50%) of Median Income in accordance with SMC 5.73.040.A.7.

b. The Affordable Units shall be provided in a range of sizes comparable to Dwelling Units and/or housing units in Congregate Residences other than Affordable Units. To the extent practicable, the type of layout (including but not limited to number of Bedrooms, and layouts that are traditional, "open", or including additional rooms such as a den or second bathroom) in the Affordable Units must be in the same proportion as the type of layout of Dwelling Units and/or housing units in Congregate Residences other than



Affordable Units within the entire development. The Affordable Units shall generally be distributed throughout the development (e.g., not located predominantly on one floor in a multi-floor building or next to noisy or adverse use) and have substantially the same functionality and access as the other units in the development to all amenities and common areas. Affordable Units shall have comparable finishes, hardware, and appliances as market rate units of similar type. The Affordable Units shall be the units so designated in the application for Final Certificate (or if not so designated there, in the Application) except for substitutions required by subsection 3.c below or permitted in writing by the Director.

c. Owner is responsible for verifying the income of each Family occupying Affordable Units no later than the date of initial occupancy.

(1) Prospective tenants of Affordable Units shall be advised of the definition of Annual Income at the time they are provided with an application for tenancy.

(2) Annual Income is calculated for prospective tenants by projecting the income anticipated to be received over the twelve-month period following the date of initial occupancy, based on the prevailing rate of income of each person at the time of income verification, which shall be no more than 120 days prior to the date of initial occupancy.

The Owner shall obtain from each tenant, no less than annually, a certification of Family size and Annual Income in form acceptable to the City.

Owners must attempt to obtain Third Party Verification whenever possible to substantiate income at each certification. The verification documents must be supplied directly to the independent source by the Owner and returned directly to the Owner from the independent source. If the independent source does not respond to the Owner's faxed, mailed, or emailed request for information, the Owner may pursue oral third-party verification. If written or oral third-party documentation are not available, the Owner may accept original documents (pay stubs, W-2, etc.) at the discretion of the Director and must document why third-party verification was not available. At the discretion of the Director of Housing, the Owner may accept tenant self-certifications from a Family occupying an Affordable Unit after the initial income verification and first annual recertification.

(3) Documentation of tenant income eligibility for Affordable Units shall be obtained by Owner or Owner's agent and maintained on file for audit or inspection through the term of the tenancy, and for six (6) calendar years thereafter. Documentation shall include, at a minimum, an application signed by the prospective



tenant declaring monthly or annual income, and certifying that the information thereon is correct, and evidence of current income.

(4) The Owner shall continue to charge Income Eligible Occupants no more than the Affordable Rent allowable until the Annual Income of the Family in the Affordable Unit is determined upon recertification to be more than 150 percent of the income limit for the type of the Affordable Unit.

(5) If, upon recertification of income, the Annual Income of a Family in one of the Affordable Units exceeds 150 percent of the income limit for the type of the unit, the Family ceases to be an Income Eligible Occupant. The next available unit of comparable size and amenities must be designated as an Affordable Unit and leased to an Income Eligible Occupant. A market-rate rent may then be charged for the unit occupied by a Family with an Annual Income exceeding 150 percent of the income limit for the type of the unit, subject to all applicable laws, ordinances, and other restrictions on the amount of rent or rent increases or the timing of increases.

c. Owner agrees to make good faith efforts to rent all vacant Affordable Units. Owner shall comply with all applicable fair housing and nondiscrimination laws, ordinances and regulations.

d. Owner agrees to rent Affordable Units only pursuant to a form lease or rental agreement prepared by Owner. Owner shall provide a copy of the form of lease currently in use to the City promptly upon any request by the City. The form lease or rental agreement: shall comply with all applicable laws; shall not include any provisions prohibited by applicable laws or regulations; shall prohibit subletting or assignment of the lease without the express written approval of Owner, which approval shall not be granted by Owner if the result would be any violation of the requirements of this Agreement to provide affordable housing; and shall state that information about the affordable housing requirements pursuant to SMC Chapter 5.73 is available from the City's Office of Housing.

e. Owner agrees that the mix and configuration of the Affordable Units shall be substantially proportional to the mix and configuration of the total housing units in the Project. If the Project contains more than one building, Owner agrees that all the Affordable Units will not be in the same building.

f. Owner agrees that the Affordable Units shall have substantially the same level of interior fixtures and quality of finish as the other housing units in the Project.

g. The Director of Housing is authorized to limit fees charged to Income Eligible Occupants upon move-in or transfer in the same building, including, but not limited to, property administrative fees, transfer fees, last month's rent, and security deposits. Any limitations placed

on fees shall not include criminal background or credit checks, which may be charged to the Income Eligible Occupant at cost.

Owners shall not authorize a fee to be charged to Income Eligible Occupants for income verification or program administration of the Multifamily Tax Exemption Program.

4. Requirements for Final Certificate of Tax Exemption.

Owner may, upon completion of the Multifamily Housing and upon issuance by the City of a temporary or permanent certificate of occupancy, request a Final Certificate of Tax Exemption ("Final Certificate"). The request shall be in writing directed to the City's Office of Housing and be accompanied by all of the following:

- a. A statement of expenditures made with respect to each Dwelling Unit and/or housing unit in a Congregate Residence in the Project and the total expenditures made with respect to the entire Project.
- b. A description of the completed work and a statement of qualification for the exemption.
- c. A brief written description of the units, and final site plans, floor plans, and unit layouts of the Multifamily Housing units and the structure(s) in which they are proposed to be located; every unit layout must include detailed information that adequately demonstrates the number of Bedrooms, consistent with the definition included in Section 5.73.020;
- d. Documentation that the Multifamily Housing was completed within the required three-year period or any authorized extension and in compliance with the terms of this Agreement.
- e. Information regarding Owner's compliance with the affordability requirements in SMC 5.73.040 and this Agreement, which shall include all of the following:
  - (1) Identification of all Affordable Units, whether rented or held vacant to be rented by Income Eligible Occupants.
  - (2) Rents (or offering rents, as applicable) for all Affordable Units.
  - (3) A copy of the application form used for rental of Affordable Units.
  - (4) A copy of the form of lease or rental agreement to be used for Affordable Units.
- f. Any such further information that the Director of Housing deems necessary or useful to evaluate eligibility for the Final Certificate.



5. Agreement to Issue Final Certificate.

The City agrees to file a Final Certificate with the King County Assessor within forty (40) days of submission of all materials required by Section 4, if Owner has:

- a. successfully completed the Multifamily Housing in accordance with the terms of this Agreement, the Application, and SMC Chapter 5.73; and
- b. filed a request for a Final Certificate with the City's Office of Housing and submitted the materials described in Section 4 above; and
- c. paid to the City a fee in the amount to be determined by the Assessor to cover the Assessor's administrative costs; and
- d. met all other requirements provided in SMC Chapter 5.73 for issuance of the Final Certificate.

6. Annual Certification.

At such times as may be required by the Director of Housing, but no less than annually for the duration of the Compliance Period, the Owner shall file a certification with the Director of Housing, verified upon oath or affirmation, which shall contain such information as the Director of Housing may deem necessary or useful and shall include the following information:

- a. a statement of the occupancy and vacancy of the Multifamily Housing during the previous year; and
- b. a statement that the Multifamily Housing has not changed use since the date of filing of the Final Certificate; and
- c. a statement that the Multifamily Housing continues to be in compliance with this Agreement and the requirements of SMC Chapter 5.73; and
- d. a description of any improvements or changes to the Project made after the filing of the Final Certificate or the previous annual certification; and
- e. information and documentation sufficient to demonstrate, to the satisfaction of the Director of Housing, compliance with the affordability requirements of SMC 5.73.040.B and this Agreement, which shall, at minimum, include the following:



(1) identification of each Affordable Unit, and any substitution of Affordable Units during the previous year; and

(2) for each Affordable Unit that was initially occupied or that had a change of tenancy during the previous year, the date of each tenant's initial occupancy, the Family size and Family Annual Income at initial occupancy, and the rent charged at initial occupancy; and

(3) for any Affordable Units with turnover during the previous calendar year, the date on which any tenancy was terminated, and the time during which the unit remained vacant; and

(4) the current contract rent on the anniversary date of the Final Certificate for each Affordable Unit.

f. Within two weeks of lease-up of all Affordable Units and no later than January 31 of the first year of tax exemption, the Owner shall file a compliance certification with the Director of Housing substantially similar in format and content to the annual property certification described in subsection 5.73.100.A.

g. After the end of the Compliance Period, and at such times as may be required by the Director of Housing, the Owner shall file a certification with the Director of Housing, verified upon oath or affirmation, containing the rent levels being charged for units that were designated as Affordable Units in the final year of the Compliance Period and for the year following the Compliance Period.

7. No Violations for Duration of Exemption.

For the duration of the limited tax exemption granted under SMC Chapter 5.73, Owner agrees that the Project and the Property will have no violations of applicable zoning requirements, land use regulations, and building and housing code requirements contained in SMC Titles 22, 23, and 25 for which the City's Department of Construction and Inspections or its functional successor shall have issued a notice of violation, citation or other notification that is not resolved by a certificate of compliance, certificate of release, withdrawal, or another method that proves either compliance or that no violation existed, within the time period for compliance, if any, provided in such notice of violation, citation or other notification or any extension of the time period for compliance granted by the Director of Housing of the Department of Construction and Inspections.

8. Notification of Transfer of Interest or Change in Use.

Owner agrees to notify the Director of Housing within thirty (30) days of any transfer of Owner's ownership interest in the Project or the Property. Owner further agrees to notify the Director of Housing and the King County Assessor within sixty (60) days of any change of use of any or all of the Multifamily Housing to another use. Owner acknowledges that such a change in use may result in cancellation of the limited tax exemption and imposition of additional taxes, interest and penalties pursuant to State law.

9. Cancellation of Exemption - Appeal.

a. The City reserves the right to cancel the limited tax exemption if at any time the Multifamily Housing no longer complies with the terms of this Agreement or with the requirements of SMC Chapter 5.73, or for any other reason no longer qualifies for a limited tax exemption.

b. If the limited tax exemption is canceled for non-compliance, Owner acknowledges that State law requires that an additional real property tax is to be imposed in the amount of: (1) the difference between the tax paid and the tax that would have been paid if it had included the value of the non-qualifying improvements, dated back to the date that the improvements became non-qualifying; (2) a penalty of 20% of the difference calculated under (1) of this subsection b.; and (3) interest at the statutory rate on delinquent property taxes and penalties, calculated from the date the tax would have been due without penalty if the improvements had been assessed without regard to the exemptions provided by RCW Chapter 84.14 and SMC Chapter 5.73. Owner acknowledges that, pursuant to RCW 84.14.110, any additional tax owed, together with interest and penalty, become a lien on the Property and attach at the time of any change of use of any or all of the Multifamily Housing or at the time that all or any portion of the Multifamily Housing no longer meets applicable requirements, and that the lien has priority to and must be fully paid and satisfied before a recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the Property may become charged or liable. Owner further acknowledges that RCW 84.14.110 provides that any such lien may be foreclosed in the manner provided by law for foreclosure of liens for delinquent real property taxes.

c. Upon determining that a limited tax exemption is to be canceled, the Director of Housing, on behalf of the Council, shall notify the owner of the Property by certified mail, return receipt requested. The owner of the Property may appeal the determination in accordance with RCW 84.14.110 and SMC 5.73.110.

10. Amendments.

No modification or amendment of this Agreement shall be made unless mutually agreed upon by the parties in writing and unless in compliance with the provisions of SMC 5.73.065.



11. Binding Effect.

The provisions, covenants, and conditions contained in this Agreement are binding upon the parties hereto and their legal heirs, representatives, successors, assigns, and subsidiaries and are intended to run with the land.

12. Recording of Agreement.

The Director of Housing shall cause to be recorded, or require Owner to record, in the real property records of the King County Recorder, this Agreement and any other documents as will identify such terms and conditions of eligibility for limited tax exemption as the Director of Housing deems appropriate for recording, including requirements under SMC Chapter 5.73 relating to affordability.

13. Audits and Inspection of Records.

Owner understands and agrees that the City has the right to audit or review appropriate records to assure compliance with this Agreement and SMC Chapter 5.73 and to perform evaluations of the effectiveness of the Multifamily Housing Property Tax Exemption program. Owner agrees to make appropriate records available for review or audit upon seven (7) days' written notice by the City.

14. Notices.

All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when hand-delivered within normal business hours, when actually received by facsimile transmission, or two business days after having been mailed, postage prepaid, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

OWNER:

OWNER CONTACT INFO

CITY:

City of Seattle  
Office of Housing  
700 Fifth Avenue, #5700  
PO Box 94725  
Seattle, Washington 98124-4725  
Phone: (206) 684-0721 Fax: (206) 233-7117  
Attention: Director of Housing



15. Severability.

If any term or clause of this Agreement conflicts with applicable law, such conflict shall not affect other terms of this Agreement that can be given effect without the conflicting terms or clause, and to this end, the terms of the Agreement are declared to be severable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

CITY:  
The City of Seattle

OWNER:  
OWNER ENTITY NAME  
INCORPORATION STATE OWNERSHIP  
TYPE

By: \_\_\_\_\_  
Steve Walker  
Director of Housing  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF WASHINGTON )

) ss.

COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared before me **Steve Walker**, to me known to be the **Director of Housing of The City of Seattle**, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal the date and year first above written.

\_\_\_\_\_  
Print

name: \_\_\_\_\_

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_

My Commission expires \_\_\_\_\_

**INSERT YOUR PAGE TO NOTARIZE SIGNATURE**



## **EXHIBIT E**

### **Recreation Center Lease Term Sheet**

## EXHIBIT E

### Lease Term Sheet (Recreation Center)

**Building:** Mercer West

**Owner:** 800 Mercer, LLC

**Tenant:** City of Seattle (acting by and through Seattle Parks and Recreation)

**Lease:** The "**Facility**" will be a recreation/fitness center owned by Owner and leased to Tenant pursuant to a lease ("**Lease**") consistent with the terms of this Term Sheet. Tenant will have the rights and obligations described in the Lease with respect to Tenant's operation of the Facility.

**Facility Design and Construction:** Tenant shall be responsible for designing the Facility at Tenant's cost (using its customary public outreach protocol for facilities similar to the Facility). Tenant will design the Facility in accordance with a quality standard consistent with the design standards of the Rainier Beach Community Center (the "**Design Standard**"). The Design Standard may be modified to provide for equipment, operational standards and/or improvements of higher grade and materials than the Design Standard at Owner's Request ("**Owner Changes**") provided that Owner shall bear the incremental cost of Owner Changes. The design of the Facility shall provide for, at a minimum, athletic facilities (e.g. basketball court, fitness room, gym, but no aquatic facilities), which design shall be subject to Owner's written approval, not to be unreasonably withheld, conditioned or delayed. Owner shall construct the Facility at Owner's cost and deliver the Facility to Tenant in shell condition, ready for installation of the Tenant Improvements (defined below).

**Premises:** The Facility will measure up to 30,000 rentable square feet and will be located in the ground floor of Owner's building ("**Building**"). The Facility and Building shall be measured in accordance with ANSI/BOMA Z65.1-2017.

**Use:** The Facility shall be used as a recreation center consistent with the Design Standard, and for no other use without Owner's consent, which may be granted or withheld in Owner's sole discretion.

The following uses will not be allowed under any circumstances:

- Homeless shelter
- Bar, nightclub, tavern, cocktail lounge, marijuana dispensaries
- Drug exchange

- Drug and/or alcohol rehabilitation use
- Adult entertainment or other sexually oriented business
- Housing for sex offenders
- Check cashing operations
- Auto repair
- Thrift store
- Flea market, pawnshops
- Recycling facility
- Mortuary, funeral parlor
- House of worship
- Shop selling drug paraphernalia
- Animal daycare or grooming

Term: 25 years

Covenant to Open: The Lease will contain a covenant from Tenant to open the Facility within an agreed number months after the "***Delivery Date***", which shall be the date Owner delivers the Facility to Tenant in shell condition, ready for construction of the Tenant Improvements (defined below); subject to force majeure delays. Tenant's obligation to pay Operating Expenses (defined below) will commence five (5) months after the Delivery Date or, if earlier, the date upon which Tenant opens the Facility to the public (the "***Commencement Date***").

Base Rent: \$0

Operating Expenses: Tenant will be obligated to pay its "proportionate share" of customary "***Operating Expenses***" incurred at the Building (insurance, taxes, maintenance, utilities, etc.) on a triple net basis. To the extent that Tenant obtains tax exemptions with respect to the Facility for the benefit of the Building or Owner, such exemptions will reduce Tenant's share of Operating Expenses by the amount of such exemption. Capital expenses permitted to be included in Operating Expenses for which Tenant will be obligated to pay an amortized share include those (a) required by laws enacted after the Commencement Date, (b) reasonably estimated to result in savings in other Operating Expenses, (c) repairs or replacement of Building systems serving the Facility or (d) improvements to the Building required to reasonably maintain the Building and Facility. Any allowed capital expenses will be amortized over the useful life of the item. Tenant's proportionate share of Operating Expenses will be determined by taking into account the square footage of the Facility as a percentage of the square footage of the Building.

Maintenance &  
Repair:

Tenant will maintain and repair the Facility in accordance with an annual maintenance plan (the "***Annual Plan***") prepared by Tenant and approved



by Owner. The Annual Plan will include Tenant's plans and budget for maintenance, repairs, replacements, and/or capital improvements reasonably required to maintain the Facility in a manner consistent with a Class A building. If Tenant fails to comply with the obligations in the Annual Plan, Owner may make such repairs and/or perform such maintenance required under the Annual Plan and Tenant shall pay Owner for the costs of such work.

- Owner's Work: Owner will construct the Shell and Core of the Facility at its expense.
- Tenant Improvements: Owner will provide an allowance of \$3,000,000 (the "*Allowance*") for the construction of certain tenant improvements and the acquisition and installation of certain furniture, fixture and equipment necessary to open and operate the Facility for the permitted use in accordance with the Design Standard (the "*Tenant Improvements*"). Subject to Owner's prior approval, Tenant may select the architect and contractor to construct the Tenant Improvements. Owner shall receive a fee of 3% of the total Tenant Improvement cost if Owner manages the construction of the Tenant Improvements.
- Parking: None.
- Renewal Option: Tenant will have two (2) options to extend the term of the Lease: one 10-year option and one 5-year option
- Operating Hours: The Lease will: (i) contain a covenant that Tenant's operation of the Facility shall be consistent with other City of Seattle Tier 1 community centers; (ii) provide that Tenant shall make the Facility open to the general public for 60 to 70 hours per week during non-holiday weeks (the "*Minimum Hours*").
- Tenant's Termination Right: The Lease will grant Tenant the unilateral right to terminate the Lease without penalty on or before a mutually acceptable date.
- Non-Disturbance Agreements: The Lease will be subordinate to Owner's financing, but will contain customary non-disturbance language.
- Signage: Tenant will be permitted to install signage in and around the Facility that is consistent with Tenant's signage for facilities similar to the Facility, consistent with the Building standard signage program and in accordance with applicable law, all subject to Owner's approval.

Assignment &

**Subletting:** Tenant will have the right to contract for the operation of the Facility with a third-party who is reasonably acceptable to Owner, but will not have the right to otherwise assign its rights under the Lease.

**HVAC:** TBD

**Rules & Regulations:** TBD (to be consistent with the Rules & Regulations applicable to retail portions of Owner's project)

## **EXHIBIT F**

### **Purchaser's Pro-Forma Title Policy**



## ALTA OWNER'S POLICY OF TITLE INSURANCE

Issued By:



CHICAGO TITLE  
INSURANCE COMPANY

Policy Number:

**PROFORMA  
190120A-SC**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

### COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, CHICAGO TITLE INSURANCE COMPANY, a Florida corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
  - (a) A defect in the Title caused by
    - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
    - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
    - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - (vii) a defective judicial or administrative proceeding.
  - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (a) the occupancy, use, or enjoyment of the Land;
  - (b) the character, dimensions, or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protection

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA Owner's Policy (06/17/2006)



**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120A-SC**

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
  - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
  - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
    - (i) to be timely, or
    - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

IN WITNESS WHEREOF, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.

Chicago Title Company of Washington  
701 5th Avenue, Suite 2700  
Seattle, WA 98104

Countersigned By:

**PROFORMA**

Authorized Officer or Agent



**Chicago Title Insurance Company**

By:

A handwritten signature in black ink, appearing to read "Rgm/M. Quinn", written over a horizontal line.

President

Attest:

A handwritten signature in black ink, appearing to be a stylized "L", written over a horizontal line.

Secretary

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA Owner's Policy (06/17/2006)





**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120A-SC**

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA Owner's Policy (06/17/2006)





**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120A-SC**

**SCHEDULE A**

Name and Address of Title Insurance Company: Chicago Title Company of Washington  
701 5th Avenue, Suite 2700  
Seattle, WA 98104

Address Reference: 800 Mercer Street, Seattle, WA 98109

Date of Policy	Amount of Insurance	Premium
Date and Time of Recording	PROFORMA	PROFORMA

1. Name of Insured:

800 Mercer, LLC, a Delaware limited liability company

2. The estate or interest in the Land that is insured by this policy is:

Fee Simple

3. Title is vested in:

800 Mercer, LLC, a Delaware limited liability company

4. The Land referred to in this policy is described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

**THIS POLICY VALID ONLY IF SCHEDULE B IS ATTACHED**

**END OF SCHEDULE A**

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA Owner's Policy (06/17/2006)



**EXHIBIT "A"**  
**Legal Description**

**Parcels A and B (Revised):**

Parcel B, City of Seattle Lot Boundary Adjustment Number 3033220-LU, recorded under Recording No 20190524900001, Records of King County, Washington.

**Parcels C and D (Revised):**

Parcel A, City of Seattle Lot Boundary Adjustment Number 3033220-LU, recorded under Recording No 20190524900001, Records of King County, Washington.

**Parcel E: Intentionally deleted.**

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ALTA Owner's Policy (06/17/2006)



**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120A-SC**

**SCHEDULE B  
EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses that arise by reason of:

**GENERAL EXCEPTIONS**

**NONE**

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ALTA Owner's Policy (06/17/2006)





**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120A-SC**

**SCHEDULE B  
EXCEPTIONS FROM COVERAGE**  
(continued)

**SPECIAL EXCEPTIONS**

1. This item intentionally deleted
2. Right to make necessary slopes for cuts or fills upon property herein described, as provided by Ordinance Numbers. 17628 and 49108 of the City of Seattle, dated December 24, 1907 and June 25, 1925 respectively.
3. Right to make necessary slopes for cuts or fills upon property herein described and the right to damage the land by changing and establishing street grades, as condemned in King County Superior Court Cause No. 193437, as provided by Ordinance No. 50890 of the City of Seattle, dated May 3, 1926.
4. This item intentionally deleted
5. Right to make necessary slopes for cuts or fills upon property herein described and the right to damage the land by changing and establishing street grades, as condemned in King County Superior Court Cause No. 486551, as provided by Ordinance No. 84452 of the City of Seattle, dated September 26, 1955.
6. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:  
  
Reserved by: City of Seattle  
Purpose: Existing overhead or underground utilities  
Ordinance No.: 89653, dated October 4, 1960  
Affects: Vacated portion of 8th Ave North, Parcel C
7. Matters contained in that certain document  
  
Entitled: Release of Damage Agreement, and the terms and conditions thereof:  
Recording Date: August 3, 1962  
Recording No.: 5461596  
  
Which provides for among other things: Releasing City of Seattle from all future claims for damages resulting from permission to construct and connect side sewer and catch basin  
  
Reference is hereby made to said document for full particulars.
8. This item intentionally deleted

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ALTA Owner's Policy (06/17/2006)



**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120A-SC**

**SCHEDULE B  
EXCEPTIONS FROM COVERAGE  
(continued)**

9. This item intentionally deleted

10. This item intentionally deleted

11. Matters contained in that certain document

Entitled: City of Seattle Ordinance No. 120863, and the terms and conditions thereof:  
Recording Date: August 13, 2002  
Recording No.: 20020813000330  
Affects: Portions of vacated Broad Street, 8th Avenue North and 9th Avenue North

Which provides for among other things: Easement for existing overhead or underground utilities, right to maintain retaining wall, and right to make slopes.

Reference is hereby made to said document for full particulars.

12. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: King County  
Purpose: Sewer lines and public access for pedestrians and bicyclists  
Ordinance No.: 125599, dated June 22, 2018  
Affects: vacated Broad Street, 8th Avenue North and Mercer Street

13. This item intentionally deleted

14. This item intentionally deleted

15. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: King County  
Purpose: Sewer pipelines, together with all connections, manholes and appurtenances thereto  
Recording Date: September 28, 2018  
Recording No.: 20180928001996  
Affects: Portion of Parcels C and D

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ALTA Owner's Policy (06/17/2006)



**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120A-SC**

**SCHEDULE B  
EXCEPTIONS FROM COVERAGE**  
(continued)

16. Liability for general and special taxes and charges for the year 2019 and subsequent years, for tax account number 224900-0006-01 (levy code 0011), a lien not yet due and payable.
17. This item intentionally deleted
18. Liability for general and special taxes and charges for the year 2019 and subsequent years, for tax account number 224900-0055-01 (levy code 0011), a lien not yet due and payable.
19. This item intentionally deleted
20. This item intentionally deleted
21. This item intentionally deleted
22. This item intentionally deleted
23. This item intentionally deleted
24. This item intentionally deleted

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**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120A-SC**

**SCHEDULE B  
EXCEPTIONS FROM COVERAGE**  
(continued)

25. Any rights, interests, or claims which may exist or arise by reason of the following matters disclosed by survey:
- Job No.: 2019046.01  
Dated: April 4, 2019  
Prepared by: Bush, Roed & Hitchings, Inc.  
Matters shown: A) Fence extends 0.5'-2.0' into right of way for Dexter Ave. N;  
B) Vaults, vents, concrete walk, and concrete pad extend into right of way for Roy St.; and  
C) Fence extends up to 7.5' into right of way for Mercer St.
26. This item intentionally deleted

**END OF SCHEDULE B**

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ALTA Owner's Policy (06/17/2006)



**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120A-SC**

**CONDITIONS**

**1. DEFINITION OF TERMS**

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
  - (i) The term "Insured" also includes
    - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
    - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
    - (C) successors to an Insured by its conversion to another kind of Entity;
    - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
      - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
      - (2) if the grantee wholly owns the named Insured,
      - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
      - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
  - (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

**2. CONTINUATION OF INSURANCE**

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

**3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT**

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

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ALTA Owner's Policy (06/17/2006)





**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120A-SC**

(continued)

**4. PROOF OF LOSS**

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

**5. DEFENSE AND PROSECUTION OF ACTIONS**

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

**6. DUTY OF INSURED CLAIMANT TO COOPERATE**

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

**7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance.  
To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.  
Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
  - (i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

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ALTA Owner's Policy (06/17/2006)





**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120A-SC**

(continued)

- (ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

**8. DETERMINATION AND EXTENT OF LIABILITY**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
  - (i) the Amount of Insurance; or
  - (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
  - (i) the Amount of Insurance shall be increased by Ten percent (10%), and
  - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

**9. LIMITATION OF LIABILITY**

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

**10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

**11. LIABILITY NONCUMULATIVE**

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

**12. PAYMENT OF LOSS**

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within thirty (30) days.

**13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**

- (a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

- (b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

**14. ARBITRATION INTENTIONALLY DELETED**

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ALTA Owner's Policy (06/17/2006)



**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120A-SC**

(continued)

**15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

**16. SEVERABILITY**

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

**17. CHOICE OF LAW; FORUM**

- (a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

- (b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

**18. NOTICES, WHERE SENT**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at:

Chicago Title Insurance Company  
P.O. Box 45023  
Jacksonville, FL 32232-5023  
Attn: Claims Department

**END OF CONDITIONS**

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ALTA Owner's Policy (06/17/2006)





**ENDORSEMENT - ALTA 25-06**

**SAME AS SURVEY**

Issued By:



CHICAGO TITLE  
INSURANCE COMPANY

Attached to Policy Number:

**PROFORMA 190120A-SC**

Charge: TBD

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by Bush, Roed & Hitchings, Inc. dated April 4, 2019, last revised \_\_\_\_\_, 2019, and designated Job No. 2019046.01.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

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ALTA 25-06-Same as Survey  
CLTA 116.1-06

(10/16/2008)  
(10/16/2008)



Printed: 04.25.19 @ 02:14 PM  
WA-CT-FBCM-02150.622476-SPS-72306-1-190120A-SC



**ENDORSEMENT - ALTA 26-06**

**SUBDIVISION**

Issued By:



**CHICAGO TITLE  
INSURANCE COMPANY**

Attached to Policy Number:

**PROFORMA 190120A-SC**

Charge: TBD

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land to constitute a lawfully created parcel according to the subdivision statutes and local subdivision ordinances applicable to the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

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ALTA 26-06-Subdivision  
CLTA 116.8-06

(10/16/2008)  
(10/16/2008)



Printed: 07.10.19 @ 03:38 PM  
WA-CT-FBCM-02150.622476-SPS-72306-1-190120A-SC

## ENDORSEMENT - ALTA 17-06

## ACCESS AND ENTRY

Issued By:



CHICAGO TITLE  
INSURANCE COMPANY

Attached to Policy Number:

**PROFORMA 190120A-SC**

Charge: TBD

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the Land does not abut and have both actual vehicular and pedestrian access to and from Roy Street and 9th Avenue North (the "Streets"), (ii) the Streets are not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along those portions of the Streets abutting the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

PROFORMA

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 17-06-Access & Entry  
CLTA 103.11-06

(06/17/2006)  
(06/17/2006)



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WA-CT-FBCM-02150.622476-SPS-72306-1--190120A-SC

**ENDORSEMENT - ALTA 18.1-06**

**MULTIPLE TAX PARCEL**

Issued By:



**CHICAGO TITLE  
INSURANCE COMPANY**

Attached to Policy Number:

**PROFORMA 190120A-SC**

Charge: TBD

The Company insures against loss or damage sustained by the Insured by reason of:

1. those portions of the Land identified below not being assessed for real estate taxes under the listed tax identification numbers or those tax identification numbers including any additional land:

Parcel:

Tax Identification Numbers:

Parcels A and B (Revised)

224900-0006-01

Parcels C and D (Revised)

224900-0055-01

2. the easements, if any, described in Schedule A being cut off or disturbed by the nonpayment of real estate taxes, assessments or other charges imposed on the servient estate by a governmental authority.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 18.1-06-Multiple Tax Parcel  
CLTA 129.1-06

(06/17/2006)  
(06/17/2006)



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WA-CT-FBCM-02150.622476-SPS-72306-1-190120A-SC



## ENDORSEMENT - ALTA 17.2-06

## UTILITY ACCESS

Issued By:



CHICAGO TITLE  
INSURANCE COMPANY

Attached to Policy Number:

**PROFORMA 190120A-SC**

Charge: TBD

The Company insures against loss or damage sustained by the Insured by reason of the lack of a right of access to the following utilities or services:

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> Water service            | <input type="checkbox"/> Natural gas service       | <input checked="" type="checkbox"/> Telephone service    |
| <input checked="" type="checkbox"/> Electrical power service | <input checked="" type="checkbox"/> Sanitary sewer | <input checked="" type="checkbox"/> Storm water drainage |

either over, under or upon rights-of-way or easements for the benefit of the Land because of:

- (1) a gap or gore between the boundaries of the Land and the rights-of-way or easements;
- (2) a gap between the boundaries of the rights-of-way or easements ; or
- (3) a termination by a grantor, or its successor, of the rights-of-way or easements.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

PROFORMA

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 17.2-06-Utility Access  
CLTA 103.13-06

(10/16/2008)  
(10/16/2008)



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WA-CT-FBCM-02150.622476-SPS-72306-1-190120A-SC

## ENDORSEMENT - ALTA 3.2-06

## ZONING - LAND UNDER DEVELOPMENT

Issued By:



CHICAGO TITLE  
INSURANCE COMPANY

Attached to Policy Number:

**PROFORMA 190120A-SC**

Charge: TBD

1. For purposes of this endorsement:
  - a. "Improvement" means a building, structure, road, walkway, driveway, curb, subsurface utility or water well existing at Date of Policy or to be built or constructed according to the Plans that is or will be located on the Land, but excluding crops, landscaping, lawns, shrubbery, or trees.
  - b. "Plans" means those site and elevation plans made by \_\_\_\_\_ dated \_\_\_\_\_, 2019, last revised \_\_\_\_\_, 2019, designated as \_\_\_\_\_ consisting of \_\_\_\_\_ ( ) sheets.
2. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy
  - a. according to applicable zoning ordinances and amendments, the Land is not classified Zone SM-SLU 175/85/280 (Seattle Mixed-South Lake Union);
  - b. the following use or uses are not allowed under that classification:  
Mixed use office, retail and residential
  - c. There shall be no liability under paragraph 2.b. if the use or uses are not allowed as the result of any lack of compliance with any condition, restriction, or requirement contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 2.c. does not modify or limit the coverage provided in Covered Risk 5.
3. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction either prohibiting the use of the Land, with any Improvement, as specified in paragraph 2.b. or requiring the removal or alteration of the Improvement, because of a violation of the zoning ordinances and amendments in effect at Date of Policy with respect to any of the following matters:
  - a. Area, width, or depth of the Land as a building site for the Improvement
  - b. Floor space area of the Improvement
  - c. Setback of the Improvement from the property lines of the Land
  - d. Height of the Improvement, or
  - e. Number of parking spaces.
4. There shall be no liability under this endorsement based on:
  - a. the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;
  - b. the refusal of any person to purchase, lease or lend money on the Title covered by this policy.

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 3.2-06-Zoning-Land Under Development

(04/02/2012)

Printed: 04.25.19 @ 03:00 PM

WA-CT-FBCM-02150.622476-SPS-72306-1--190120A-SC



Attached to Policy No. PROFORMA 190120A-SC

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

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ALTA 3.2-06-Zoning-Land Under Development

(04/02/2012)

Printed: 04.25.19 @ 03:00 PM

WA-CT-FBCM-02150.622476-SPS-72306-1--190120A-SC





**COVENANTS, CONDITIONS AND  
RESTRICTIONS - LAND UNDER  
DEVELOPMENT**

**ENDORSEMENT - ALTA 9.8-06**

Issued By:



**CHICAGO TITLE  
INSURANCE COMPANY**

Attached to Policy Number:

**PROFORMA 190120A-SC**

Charge: TBD

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
  - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
  - b. "Future Improvement" means a building, structure, road, walkway, driveway, curb to be constructed on or affixed to the Land in the locations according to the Plans and that by law will constitute real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
  - c. "Improvement" means a building, structure located on the surface of the Land, road, walkway, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
  - d. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by \_\_\_\_\_ dated \_\_\_\_\_, 2019, last revised \_\_\_\_\_, 2019, designated as \_\_\_\_\_ consisting of \_\_\_\_\_ ( ) sheets.
3. The Company insures against loss or damage sustained by the Insured by reason of:
  - a. A violation of an enforceable Covenant by an Improvement on the Land at Date of Policy or by a Future Improvement, unless an exception in Schedule B of the policy identifies the violation;
  - b. Enforced removal of an Improvement located on the Land or of a Future Improvement as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records at Date of Policy, unless an exception in Schedule B of the policy identifies the violation; or
  - c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
  - a. any Covenant contained in an instrument creating a lease;
  - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 9.8-06-Cov, Cond, and Restr-Owners-Land Under Dvp

(04/02/2012)

Printed: 04.25.19 @ 03:01 PM

WA-CT-FBCM-02150.622476-SPS-72306-1-190120A-SC



Attached to Policy No. PROFORMA 190120A-SC

- c. except as provided in Section 3.c, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 9.8-06-Cov, Cond, and Restr-Owners-Land Under Dvlp

(04/02/2012)

Printed: 04.25.19 @ 03:01 PM

WA-CT-FBCM-02150.622476-SPS-72306-1-190120A-SC



## ENDORSEMENT

## DELETION OF ARBITRATION

Issued By:



CHICAGO TITLE  
INSURANCE COMPANY

Attached to Policy Number:

**PROFORMA 190120A-SC**

Charge: TBD

The policy is hereby amended by deleting Paragraph 14 of the Conditions, relating to Arbitration.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

PROFORMA

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.



## ENDORSEMENT - ALTA 39-06

## POLICY AUTHENTICATION

Issued By:



CHICAGO TITLE  
INSURANCE COMPANY

Attached to Policy Number:

**PROFORMA 190120A-SC**

Charge: TBD

When the policy is issued by the Company with a policy number and Date of Policy, the Company will not deny liability under the policy or any endorsements issued with the policy solely on the grounds that the policy or endorsements were issued electronically or lack signatures in accordance with the Conditions.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

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ALTA 39-06 - Policy Authentication

(04/02/2013)



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**ENDORSEMENT - ALTA 8.2-06**

**COMMERCIAL ENVIRONMENTAL  
PROTECTION LIEN**

Issued By:



**CHICAGO TITLE  
INSURANCE COMPANY**

Attached to Policy Number:

**PROFORMA 190120A-SC**

Charge: TBD

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

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ALTA 8.2-06-Commercial Environmental Protection Lien  
CLTA 110.9.1-06

(10/16/2008)  
(10/16/2008)



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WA-CT-FBCM-02150.622476-SPS-72306-1-190120A-SC

## ENDORSEMENT

**FAIRWAY LLC**

Issued By:



**CHICAGO TITLE  
INSURANCE COMPANY**

Attached to Policy Number:

**PROFORMA 190120A-SC**

Charge: TBD

The Company agrees that it will not interpose as a defense to a claim of coverage under this policy the fact that a dissolution of the insured limited liability company has occurred, or a new limited liability company has been formed, solely by reason of the admission of an additional member to the insured limited liability company or the withdrawal or replacement of one or more of the members of the original insured limited liability company so long as the insured remains as the title holder, and no new limited liability company is explicitly formed. The Company reserves all of its rights and defenses under the policy which it would have had against the insured or its constituent members before or after any withdrawal or replacement of members.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.



## ENDORSEMENT - ALTA 22-06

## LOCATION

Issued By:



CHICAGO TITLE  
INSURANCE COMPANY

Attached to Policy Number:

**PROFORMA 190120A-SC**

Charge: TBD

The Company insures against loss or damage sustained by the Insured by reason of the failure of a vacant tract of land, known as 800 Mercer Street, Seattle, WA 98109, to be located on the Land at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

PROFORMA

Authorized Officer or Agent

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ALTA 22-06-Location  
CLTA 116.01-06

(06/17/2006)  
(06/17/2006)



Printed: 04.25.19 @ 03:03 PM  
WA-CT-FBCM-02150.622476-SPS-72306-1--190120A-SC

**ENCROACHMENTS-  
BOUNDARIES AND EASEMENTS-  
DESCRIBED IMPROVEMENTS AND  
LAND UNDER DEVELOPMENT**

**ENDORSEMENT - ALTA 28.3-06**

Issued By:



CHICAGO TITLE  
INSURANCE COMPANY

Attached to Policy Number:

**PROFORMA 190120A-SC**

Charge: TBD

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
  - (a) "Improvement" means a building, structure, or paved area, including any road, walkway, parking area, driveway, or curb located on the surface of the Land or the surface of adjoining land at Date of Policy that by law constitutes real property.
  - (b) "Future Improvement" means any of the following to be constructed on the Land after Date of Policy in the locations according to the Plans and that by law constitutes real property:
    - (i) a building;
    - (ii) a structure; or
    - (iii) a paved area, including any road, walkway, parking area, driveway, or curb.
  - (c) "Plans" mean the survey, site and elevation plans, or other depictions or drawings prepared by \_\_\_\_\_ dated \_\_\_\_\_, 2019, last revised \_\_\_\_\_, 2019, designated as \_\_\_\_\_ consisting of \_\_\_\_\_ (\_\_\_\_) sheets.
3. The Company insures against loss or damage sustained by the Insured by reason of:
  - (a) An encroachment of any Improvement or Future Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement, unless an Exception in Schedule B of the policy identifies the encroachment;
  - (b) An encroachment of any Improvement located on adjoining land onto the Land at Date of Policy, unless an exception in Schedule B of the policy identifies the encroachment;
  - (c) Enforced removal of any Improvement or Future Improvement located on the Land as a result of an encroachment by the Improvement or Future Improvement onto any portion of the Land subject to any easement, in the event that the owners of the easement shall, for the purpose of exercising the right of use or maintenance of the easement, compel removal or relocation of the encroaching Improvement or Future Improvement; or
  - (d) Enforced removal of any Improvement or Future Improvement located on the Land that encroaches onto adjoining land.

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 28.3-06-Encroachments-Boundaries and Easements-  
Described Improvements and Land Under Development

(04/02/2015)

Printed: 04.25.19 @ 03:04 PM  
WA-CT-FBCM-02150.622476-SPS-72306-1-190120A-SC



Attached to Policy No. PROFORMA 190120A-SC

4. Sections 3(c) and 3(d) of this endorsement do not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from the following Exceptions, if any, listed in Schedule B: 30

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 28.3-06-Encroachments-Boundaries and Easements-  
Described Improvements and Land Under Development

(04/02/2015)

Printed: 04.25.19 @ 03:04 PM  
WA-CT-FBCM-02150.622476-SPS-72306-1-190120A-SC





## ALTA OWNER'S POLICY OF TITLE INSURANCE

Issued By:



CHICAGO TITLE  
INSURANCE COMPANY

Policy Number:

**PROFORMA  
190120B-SC**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

### COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, CHICAGO TITLE INSURANCE COMPANY, a Florida corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
  - (a) A defect in the Title caused by
    - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
    - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
    - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - (vii) a defective judicial or administrative proceeding.
  - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (a) the occupancy, use, or enjoyment of the Land;
  - (b) the character, dimensions, or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protection

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA Owner's Policy (06/17/2006)



**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120B-SC**

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
  - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
  - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
    - (i) to be timely, or
    - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

IN WITNESS WHEREOF, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.

Chicago Title Company of Washington  
701 5th Avenue, Suite 2700  
Seattle, WA 98104

Countersigned By:

**PROFORMA**

Authorized Officer or Agent



**Chicago Title Insurance Company**

By:

A handwritten signature in black ink, appearing to read "Bryan M. Smith", written over a horizontal line.

President

Attest:

A handwritten signature in black ink, appearing to read "John A. Smith", written over a horizontal line.

Secretary

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**CHICAGO TITLE INSURANCE COMPANY**

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**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

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ALTA Owner's Policy (06/17/2006)





**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120B-SC**

**SCHEDULE A**

Name and Address of Title Insurance Company: Chicago Title Company of Washington  
701 5th Avenue, Suite 2700  
Seattle, WA 98104

Address Reference: 615 Dexter Ave N, Seattle, WA 98109

Date of Policy	Amount of Insurance	Premium
Date and Time of Recording	PROFORMA	PROFORMA

1. Name of Insured:

615 Dexter, LLC, a Delaware limited liability company

2. The estate or interest in the Land that is insured by this policy is:

Fee Simple

3. Title is vested in:

615 Dexter, LLC, a Delaware limited liability company

4. The Land referred to in this policy is described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

**THIS POLICY VALID ONLY IF SCHEDULE B IS ATTACHED**

**END OF SCHEDULE A**

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ALTA Owner's Policy (06/17/2006)



## **EXHIBIT "A"**

### **Legal Description**

**Parcel A: Intentionally deleted.**

**Parcel B: Intentionally deleted.**

**Parcel C: Intentionally deleted.**

**Parcel D: Intentionally deleted.**

**Parcel E:**

The North 52 feet of Lot 3 and all of Lot 4, Block 3, Eden Addition to the City of Seattle, according to the plat thereof recorded in Volume 1 of Plats, Page 61A, in King County, Washington;

Except the East 20 feet thereof condemned in King County Superior Court Cause No. 193437, as provided by Ordinance No. 50890 of the City of Seattle; and

Except that portion thereof condemned in King County Superior Court Cause No. 486551 for street;

Also

Lot 5 and the North 52 feet of Lot 6, Block 3, Eden Addition to the City of Seattle, according to the plat thereof recorded in Volume 1 of Plats, Page 61A, in King County, Washington;

Except that portion thereof condemned for Aurora Avenue, in King County Superior Court Cause No. 236360 under Ordinance No. 59719 of the City of Seattle.

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ALTA Owner's Policy (06/17/2006)



**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120B-SC**

**SCHEDULE B  
EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses that arise by reason of:

**GENERAL EXCEPTIONS**

**NONE**

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ALTA Owner's Policy (08/17/2006)





**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120B-SC**

**SCHEDULE B  
EXCEPTIONS FROM COVERAGE  
(continued)**

**SPECIAL EXCEPTIONS**

1. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:  

Granted to:	Postal Telegraph-Cable Company
Purpose:	Construction, operation and maintenance of telegraph and telephone line with all necessary appurtenances
Recording Date:	June 8, 1929
Recording No.:	2541621
Affects:	Portion of Lot 4, Block 3, Eden Addition
2. Right to make necessary slopes for cuts or fills upon property herein described, as provided by Ordinance Numbers. 17628 and 49108 of the City of Seattle, dated December 24, 1907 and June 25, 1925 respectively.
3. Right to make necessary slopes for cuts or fills upon property herein described and the right to damage the land by changing and establishing street grades, as condemned in King County Superior Court Cause No. 193437, as provided by Ordinance No. 50890 of the City of Seattle, dated May 3, 1926.
4. Right to make necessary slopes for cuts or fills upon property herein described and the right to damage the land by changing and establishing street grades, as condemned in King County Superior Court Cause No. 236360, as provided by Ordinance No. 59719 of the City of Seattle, dated July 10, 1930.
5. This item intentionally deleted
6. This item intentionally deleted
7. This item intentionally deleted
8. This item intentionally deleted
9. This item intentionally deleted

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**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120B-SC**

**SCHEDULE B  
EXCEPTIONS FROM COVERAGE  
(continued)**

10. This item intentionally deleted
11. This item intentionally deleted
12. This item intentionally deleted
13. This item intentionally deleted
14. This item intentionally deleted
15. This item intentionally deleted
16. This item intentionally deleted
17. This item intentionally deleted
18. This item intentionally deleted
19. This item intentionally deleted
20. Liability for general and special taxes and charges for the year 2019 and subsequent years, for tax account number 224900-0120-01 (levy code 0011), a lien not yet due and payable.

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**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120B-SC**

**SCHEDULE B  
EXCEPTIONS FROM COVERAGE**  
(continued)

21. This item intentionally deleted

22. This item intentionally deleted

23. This item intentionally deleted

24. This item intentionally deleted

25. Any rights, interests, or claims which may exist or arise by reason of the following matters disclosed by survey:

Job No.: 2019046.00

Dated: April 1, 2019

Prepared by: Bush, Roed & Hitchings, Inc.

Matters shown: A) Northwest building corner extends 0.1' into right of way for Aurora Avenue North; and  
B) Concrete retaining wall extends 0.3' into alley adjoining and 0.1' into right of way for Dexter Avenue North.

**END OF SCHEDULE B**

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ALTA Owner's Policy (06/17/2006)





**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120B-SC**

**CONDITIONS**

**1. DEFINITION OF TERMS**

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
  - (i) The term "Insured" also includes
    - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
    - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
    - (C) successors to an Insured by its conversion to another kind of Entity;
    - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
      - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
      - (2) if the grantee wholly owns the named Insured,
      - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
      - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
  - (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

**2. CONTINUATION OF INSURANCE**

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

**3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT**

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

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ALTA Owner's Policy (06/17/2006)





**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120B-SC**

(continued)

**4. PROOF OF LOSS**

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

**5. DEFENSE AND PROSECUTION OF ACTIONS**

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

**6. DUTY OF INSURED CLAIMANT TO COOPERATE**

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

**7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

- (i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

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ALTA Owner's Policy (06/17/2006)





**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120B-SC**

(continued)

- (ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

**8. DETERMINATION AND EXTENT OF LIABILITY**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
  - (i) the Amount of Insurance; or
  - (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
  - (i) the Amount of Insurance shall be increased by Ten percent (10%), and
  - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

**9. LIMITATION OF LIABILITY**

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

**10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

**11. LIABILITY NONCUMULATIVE**

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

**12. PAYMENT OF LOSS**

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within thirty (30) days.

**13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**

- (a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

- (b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

**14. ARBITRATION INTENTIONALLY DELETED**

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA Owner's Policy (06/17/2006)





**CHICAGO TITLE INSURANCE COMPANY**

**OWNER'S POLICY NO. PROFORMA  
190120B-SC**

(continued)

**15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

**16. SEVERABILITY**

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

**17. CHOICE OF LAW; FORUM**

- (a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

- (b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

**18. NOTICES, WHERE SENT**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at:

Chicago Title Insurance Company  
P.O. Box 45023  
Jacksonville, FL 32232-5023  
Attn: Claims Department

**END OF CONDITIONS**

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA Owner's Policy (06/17/2006)



**ENDORSEMENT - ALTA 25-06**

**SAME AS SURVEY**

Issued By:



**CHICAGO TITLE  
INSURANCE COMPANY**

Attached to Policy Number:

**PROFORMA 190120B-SC**

Charge: TBD

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by Bush, Roed & Hitchings, Inc. dated April 1, 2019, last revised \_\_\_\_\_, 2019, and designated Job No. 2019046.00.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 25-06-Same as Survey  
CLTA 116.1-06

(10/16/2008)  
(10/16/2008)



Printed: 04.25.19 @ 02:34 PM  
WA-CT-FBCM-02150.622476-SPS-72306-1-190120B-SC

**ENDORSEMENT - ALTA 26-06**

**SUBDIVISION**

Issued By:



**CHICAGO TITLE  
INSURANCE COMPANY**

Attached to Policy Number:

**PROFORMA 190120B-SC**

Charge: TBD

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land to constitute a lawfully created parcel according to the subdivision statutes and local subdivision ordinances applicable to the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 26-06-Subdivision  
CLTA 116.8-06

(10/16/2008)  
(10/16/2008)



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WA-CT-FBCM-02150.622476-SPS-72306-1-190120B-SC



## ENDORSEMENT - ALTA 17-06

## ACCESS AND ENTRY

Issued By:



CHICAGO TITLE  
INSURANCE COMPANY

Attached to Policy Number:

**PROFORMA 190120B-SC**

Charge: TBD

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the Land does not abut and have both actual vehicular and pedestrian access to and from Dexter Ave. N and Roy St. (the "Streets"), (ii) the Streets are not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along those portions of the Streets abutting the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

PROFORMA

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 17-06-Access & Entry  
CLTA 103.11-06

(06/17/2006)  
(06/17/2006)



Printed: 04.25.19 @ 02:35 PM  
WA-CT-FBCM-02150.622476-SPS-72306-1-190120B-SC

**ENDORSEMENT - ALTA 18-06**

**SINGLE TAX PARCEL**

Issued By:



**CHICAGO TITLE  
INSURANCE COMPANY**

Attached to Policy Number:

**PROFORMA 190120B-SC**

Charge: TBD

The Company insures against loss or damage sustained by the Insured by reason of the Land being taxed as part of a larger parcel of land or failing to constitute a separate tax parcel for real estate taxes.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 18-06-Single Tax Parcel  
CLTA 129-06

(06/17/2006)  
(06/17/2006)



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WA-CT-FBCM-02150.622476-SPS-72306-1-190120B-SC

## ENDORSEMENT - ALTA 17.2-06

## UTILITY ACCESS

Issued By:



CHICAGO TITLE  
INSURANCE COMPANY

Attached to Policy Number:

**PROFORMA 190120B-SC**

Charge: TBD

The Company insures against loss or damage sustained by the Insured by reason of the lack of a right of access to the following utilities or services:

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> Water service            | <input checked="" type="checkbox"/> Natural gas service | <input checked="" type="checkbox"/> Telephone service    |
| <input checked="" type="checkbox"/> Electrical power service | <input checked="" type="checkbox"/> Sanitary sewer      | <input checked="" type="checkbox"/> Storm water drainage |

either over, under or upon rights-of-way or easements for the benefit of the Land because of:

- (1) a gap or gore between the boundaries of the Land and the rights-of-way or easements;
- (2) a gap between the boundaries of the rights-of-way or easements ; or
- (3) a termination by a grantor, or its successor, of the rights-of-way or easements.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 17.2-06-Utility Access  
CLTA 103.13-06

(10/16/2008)  
(10/16/2008)



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WA-CT-FBCM-02150.622476-SPS-72306-1--190120B-SC



## ENDORSEMENT - ALTA 3.2-06

## ZONING - LAND UNDER DEVELOPMENT

Issued By:



CHICAGO TITLE  
INSURANCE COMPANY

Attached to Policy Number:

**PROFORMA 190120B-SC**

Charge: TBD

1. For purposes of this endorsement:
  - a. "Improvement" means a building, structure, road, walkway, driveway, curb, subsurface utility or water well existing at Date of Policy or to be built or constructed according to the Plans that is or will be located on the Land, but excluding crops, landscaping, lawns, shrubbery, or trees.
  - b. "Plans" means those site and elevation plans made by \_\_\_\_\_ dated \_\_\_\_\_, 2019, last revised \_\_\_\_\_, 2019, designated as \_\_\_\_\_, consisting of \_\_\_\_\_ ( ) sheets.
2. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy
  - a. according to applicable zoning ordinances and amendments, the Land is not classified Zone SM-SLU 175/85-280 (Seattle Mixed-South Lake Union);
  - b. the following use or uses are not allowed under that classification:  
Mixed use office, retail and residential
  - c. There shall be no liability under paragraph 2.b. if the use or uses are not allowed as the result of any lack of compliance with any condition, restriction, or requirement contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 2.c. does not modify or limit the coverage provided in Covered Risk 5.
3. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction either prohibiting the use of the Land, with any Improvement, as specified in paragraph 2.b. or requiring the removal or alteration of the Improvement, because of a violation of the zoning ordinances and amendments in effect at Date of Policy with respect to any of the following matters:
  - a. Area, width, or depth of the Land as a building site for the Improvement
  - b. Floor space area of the Improvement
  - c. Setback of the Improvement from the property lines of the Land
  - d. Height of the Improvement, or
  - e. Number of parking spaces.
4. There shall be no liability under this endorsement based on:
  - a. the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;
  - b. the refusal of any person to purchase, lease or lend money on the Title covered by this policy.

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 3.2-06-Zoning-Land Under Development

(04/02/2012)

Printed: 04.25.19 @ 02:36 PM  
WA-CT-FBCM-02150.622476-SPS-72306-1-190120B-SC



Attached to Policy No. PROFORMA 190120B-SC

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**  
\_\_\_\_\_  
Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 3.2-06-Zoning-Land Under Development

(04/02/2012)

Printed: 04.25.19 @ 02:36 PM

WA-CT-FBCM-02150.622476-SPS-72306-1-190120B-SC





**COVENANTS, CONDITIONS AND  
RESTRICTIONS - LAND UNDER  
DEVELOPMENT**

**ENDORSEMENT - ALTA 9.8-06**

Issued By:



**CHICAGO TITLE  
INSURANCE COMPANY**

Attached to Policy Number:

**PROFORMA 190120B-SC**

Charge: TBD

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
  - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
  - b. "Future Improvement" means a building, structure, road, walkway, driveway, curb to be constructed on or affixed to the Land in the locations according to the Plans and that by law will constitute real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
  - c. "Improvement" means a building, structure located on the surface of the Land, road, walkway, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
  - d. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by \_\_\_\_\_ dated \_\_\_\_\_, 2019, last revised \_\_\_\_\_, 2019, designated as \_\_\_\_\_ consisting of \_\_\_\_\_ ( ) sheets.
3. The Company insures against loss or damage sustained by the Insured by reason of:
  - a. A violation of an enforceable Covenant by an Improvement on the Land at Date of Policy or by a Future Improvement, unless an exception in Schedule B of the policy identifies the violation;
  - b. Enforced removal of an Improvement located on the Land or of a Future Improvement as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records at Date of Policy, unless an exception in Schedule B of the policy identifies the violation; or
  - c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
  - a. any Covenant contained in an instrument creating a lease;
  - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
  - c. except as provided in Section 3.c, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 9.8-06-Cov, Cond, and Restr-Owners-Land Under Dvlp

(04/02/2012)

Printed: 04.25.19 @ 02:37 PM

WA-CT-FBCM-02150.622476-SPS-72306-1-190120B-SC





Attached to Policy No. PROFORMA 190120B-SC

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 9.8-06-Cov, Cond, and Restr-Owners-Land Under Dvlp

(04/02/2012)



Printed: 04.25.19 @ 02:37 PM

WA-CT-FBCM-02150.622476-SPS-72306-1-190120B-SC

## ENDORSEMENT

## DELETION OF ARBITRATION

Issued By:



CHICAGO TITLE  
INSURANCE COMPANY

Attached to Policy Number:

**PROFORMA 190120B-SC**

Charge: TBD

The policy is hereby amended by deleting Paragraph 14 of the Conditions, relating to Arbitration.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

PROFORMA

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

## ENDORSEMENT - ALTA 39-06

## POLICY AUTHENTICATION

Issued By:



**CHICAGO TITLE  
INSURANCE COMPANY**

Attached to Policy Number:

**PROFORMA 190120B-SC**

Charge: TBD

When the policy is issued by the Company with a policy number and Date of Policy, the Company will not deny liability under the policy or any endorsements issued with the policy solely on the grounds that the policy or endorsements were issued electronically or lack signatures in accordance with the Conditions.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 39-06 - Policy Authentication

(04/02/2013)



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**ENDORSEMENT - ALTA 8.2-06**

**COMMERCIAL ENVIRONMENTAL  
PROTECTION LIEN**

Issued By:



**CHICAGO TITLE  
INSURANCE COMPANY**

Attached to Policy Number:

**PROFORMA 190120B-SC**

Charge: TBD

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

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ALTA 8.2-06-Commercial Environmental Protection Lien  
CLTA 110.9.1-06

(10/16/2008)  
(10/16/2008)



Printed: 05.01.19 @ 05:29 PM  
WA-CT-FBCM-02150.622476-SPS-72306-1-190120B-SC

## ENDORSEMENT

**FAIRWAY LLC**

Issued By:



**CHICAGO TITLE  
INSURANCE COMPANY**

Attached to Policy Number:

**PROFORMA 190120B-SC**

Charge: TBD

The Company agrees that it will not interpose as a defense to a claim of coverage under this policy the fact that a dissolution of the insured limited liability company has occurred, or a new limited liability company has been formed, solely by reason of the admission of an additional member to the insured limited liability company or the withdrawal or replacement of one or more of the members of the original insured limited liability company so long as the insured remains as the title holder, and no new limited liability company is explicitly formed. The Company reserves all of its rights and defenses under the policy which it would have had against the insured or its constituent members before or after any withdrawal or replacement of members.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

## ENDORSEMENT - ALTA 22-06

## LOCATION

Issued By:



**CHICAGO TITLE  
INSURANCE COMPANY**

Attached to Policy Number:

**PROFORMA 190120B-SC**

Charge: TBD

The Company insures against loss or damage sustained by the Insured by reason of the failure of a commercial building, known as 615 Dexter Ave N, Seattle, WA 98109, to be located on the Land at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**

Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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ALTA 22-06-Location  
CLTA 116.01-06

(06/17/2006)  
(06/17/2006)



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WA-CT-FBCM-02150.622476-SPS-72306-1-190120B-SC



**ENCROACHMENTS-  
BOUNDARIES AND EASEMENTS-  
DESCRIBED IMPROVEMENTS AND  
LAND UNDER DEVELOPMENT**

**ENDORSEMENT - ALTA 28.3-06**

Issued By:



CHICAGO TITLE  
INSURANCE COMPANY

Attached to Policy Number:

**PROFORMA 190120B-SC**

Charge: TBD

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
  - (a) "Improvement" means a building, structure, or paved area, including any road, walkway, parking area, driveway, or curb located on the surface of the Land or the surface of adjoining land at Date of Policy that by law constitutes real property.
  - (b) "Future Improvement" means any of the following to be constructed on the Land after Date of Policy in the locations according to the Plans and that by law constitutes real property:
    - (i) a building;
    - (ii) a structure; or
    - (iii) a paved area, including any road, walkway, parking area, driveway, or curb.
  - (c) "Plans" mean the survey, site and elevation plans, or other depictions or drawings prepared by \_\_\_\_\_ dated \_\_\_\_\_, 2019, last revised \_\_\_\_\_, 2019, designated as \_\_\_\_\_ consisting of \_\_\_\_\_ ( ) sheets.
3. The Company insures against loss or damage sustained by the Insured by reason of:
  - (a) An encroachment of any Improvement or Future Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement, unless an Exception in Schedule B of the policy identifies the encroachment;
  - (b) An encroachment of any Improvement located on adjoining land onto the Land at Date of Policy, unless an exception in Schedule B of the policy identifies the encroachment;
  - (c) Enforced removal of any Improvement or Future Improvement located on the Land as a result of an encroachment by the Improvement or Future Improvement onto any portion of the Land subject to any easement, in the event that the owners of the easement shall, for the purpose of exercising the right of use or maintenance of the easement, compel removal or relocation of the encroaching Improvement or Future Improvement; or
  - (d) Enforced removal of any Improvement or Future Improvement located on the Land that encroaches onto adjoining land.
4. Sections 3(c) and 3(d) of this endorsement do not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from the following Exceptions, if any, listed in Schedule B: \_\_\_\_\_

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ALTA 28.3-06-Encroachments-Boundaries and Easements-  
Described Improvements and Land Under Development

(04/02/2015)



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Attached to Policy No. PROFORMA 190120B-SC

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

**Chicago Title Insurance Company**

Dated: PROFORMA

Countersigned By:

**PROFORMA**  
\_\_\_\_\_  
Authorized Officer or Agent

This is a PROFORMA Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company.

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