

**SECOND AMENDMENT TO  
PURCHASE AND SALE AGREEMENT**

This Second Amendment to Purchase and Sale Agreement (“**Second Amendment**”) is made and entered into as of **December 18, 2018** by and between **CITY OF MERCER ISLAND, a Washington municipal corporation** (“Buyer”) and **Buty Limited Partnership, a Washington limited partnership; Jean Mitchell Burton Testamentary Trust; Martin M. Burton Irrevocable Trust, dated April 16, 1987; Shelley Lynn Burton, as her separate estate; Shelley Lynn Burton Trust; and Melissa Mary Burton Trust, the foregoing as Tenants in Common as to 100% ownership of the Property (as defined below)**, (collectively, “Seller”) (referred to together as the “Parties”), with respect to that certain Purchase and Sale Agreement dated June 7, 2018 between Buyer and Seller, with an Effective Date of June 7, 2018 (as amended, the “PSA”) regarding the sale of property commonly known as the “Tully’s site” and located at 7810 SE 27<sup>th</sup> Street, Mercer Island, Washington 98040 (the “Property”). Capitalized terms not expressly defined herein shall have the meaning ascribed to them in the PSA.

The Parties agree as follows:

1. Section 4.1.1(a) is amended to provide that: The Due Diligence Period shall be extended to Tuesday, April 30, 2019; and Buyer shall have one option to extend the Due Diligence Period to Monday, July 1, 2019 conditioned upon: (a) written notice delivered to Seller by Friday, March 29, 2019; and (b) Seller’s written approval of such extension shall not be unreasonably withheld, conditioned or delayed.

The remainder of Section 4.1.1(a) shall remain unchanged.

2. Section 4.1.2 is amended to delete the second and third sentences and replace them in their entirety as follows:

In the event of Closing as contemplated in Section 3.2 and without an extension for purposes of a Section 1031 Exchange, then fifty percent (50%) of these rent payments shall be refunded to Buyer by Seller’s deposit to escrow within 5 days of Closing. If the Seller requests an extension for purposes of a Section 1031 Exchange as contemplated in Section 3.2, then one hundred percent (100%) of these rent payments after the 60-day period and the Due Diligence Period shall be refunded to Buyer by Seller’s deposit to escrow within 5 days before Closing.

3. Section 4.1.1(b) shall be amended to add the following:

In addition to access to conduct the Inspections, Buyer shall have access to and control of the drive aisles, parking lot and landscaped areas on the Property (collectively, the “Parking Area”). Buyer shall be solely responsible for the management of the Parking Area. The provisions of the Site Access Agreement shall be applicable to the Property use granted in this Section including without limitation claims, losses, damages, injuries, casualty, liability, lien, cost or expense (including attorney fees) made by or

to the extent arising from Buyer's invitees including without limitation persons accessing the Property. The Parking Area use shall be conditioned upon Seller's insurance carrier's continuation of insurance coverage for the Property during the Parking Area use. Buyer shall reimburse Seller on a monthly basis for any increase in Seller's insurance premiums, and any deductibles paid, subsequent to December 18, 2018 as a result of Buyer's Property use. Buyer's use of the Property under this Section shall terminate upon cancellation, termination or default of the PSA.

Buyer shall not have access to or control of the building on the Property unless for investigative purposes outlined in Section this 4.1.1(b) of the PSA.

4. If any provision of the PSA conflicts with this Second Amendment, this Second Amendment shall control.

All other terms and conditions of the Agreement remain unchanged.

*[SIGNATURES BEGIN ON FOLLOWING PAGES]*

**BUYER:**

**CITY OF MERCER ISLAND, a  
municipal corporation**

By: 

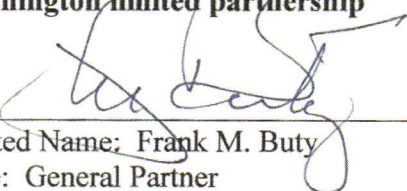
Name: Julie Thuy Underwood

Its: City Manager

Date: 12/20/18

**SELLERS:**

**BUTY LIMITED PARTNERSHIP, a  
Washington limited partnership**

By:   
Printed Name: Frank M. Buty  
Title: General Partner

Date: Dec 18, 2018

**BUTY LIMITED PARTNERSHIP, a  
Washington limited partnership**

By: \_\_\_\_\_  
Printed Name: Steve Buty  
Title: General Partner

Date: \_\_\_\_\_

**BUTY LIMITED PARTNERSHIP, a  
Washington limited partnership**

By: \_\_\_\_\_  
Printed Name: Kim Buty  
Title: General Partner

Date: \_\_\_\_\_

**SHELLEY LYNN BURTON TRUST**

By: \_\_\_\_\_  
Printed Name: Shelley L. Burton  
Title: Trustee

Date: \_\_\_\_\_

**JEAN MITCHELL BURTON  
TESTAMENTARY TRUST**

By: \_\_\_\_\_  
Printed Name: Shelley Burton  
Title: Successor Trustee

Date: \_\_\_\_\_

**MARTIN M. BURTON IRREVOCABLE  
TRUST, dated April 16, 1987**

By: \_\_\_\_\_  
Printed Name: Shelley L. Burton  
Title: Trustee

Date: \_\_\_\_\_

**SHELLEY LYNN BURTON, as her  
separate estate**

By: \_\_\_\_\_  
Printed Name: Shelley L. Burton

Date: \_\_\_\_\_

**MELISSA MARY BURTON TRUST**

By: \_\_\_\_\_  
Printed Name: Kristina C. Udall  
Title: Trustee

Date: \_\_\_\_\_



**SELLERS:**

**BUTY LIMITED PARTNERSHIP, a  
Washington limited partnership**

By: \_\_\_\_\_  
Printed Name: Frank M. Buty  
Title: General Partner

Date: \_\_\_\_\_

**BUTY LIMITED PARTNERSHIP, a  
Washington limited partnership**

By: \_\_\_\_\_  
Printed Name: Steve Buty  
Title: General Partner

Date: \_\_\_\_\_

**BUTY LIMITED PARTNERSHIP, a  
Washington limited partnership**

By: \_\_\_\_\_  
Printed Name: Kim Buty  
Title: General Partner

Date: \_\_\_\_\_

**SHELLEY LYNN BURTON TRUST**

By: Shelley L. Burton  
Printed Name: Shelley L. Burton  
Title: Trustee

Date: December 18, 2018

**JEAN MITCHELL BURTON  
TESTAMENTARY TRUST**

By: Shelley Burton  
Printed Name: Shelley Burton  
Title: Successor Trustee

Date: December 18, 2018

**MARTIN M. BURTON IRREVOCABLE  
TRUST, dated April 16, 1987**

By: Shelley L. Burton  
Printed Name: Shelley L. Burton  
Title: Trustee

Date: December 18, 2018

**SHELLEY LYNN BURTON, as her  
separate estate**

By: Shelley Burton  
Printed Name: Shelley L. Burton

Date: December 18, 2018

**MELISSA MARY BURTON TRUST**

By: \_\_\_\_\_  
Printed Name: Kristina C. Udall  
Title: Trustee

Date: \_\_\_\_\_

**SELLERS:**

**BUTY LIMITED PARTNERSHIP, a  
Washington limited partnership**

By: \_\_\_\_\_  
Printed Name: Frank M. Buty  
Title: General Partner

Date: \_\_\_\_\_

**BUTY LIMITED PARTNERSHIP, a  
Washington limited partnership**

By: \_\_\_\_\_  
Printed Name: Steve Buty  
Title: General Partner

Date: \_\_\_\_\_

**BUTY LIMITED PARTNERSHIP, a  
Washington limited partnership**

By: \_\_\_\_\_  
Printed Name: Kim Buty  
Title: General Partner

Date: \_\_\_\_\_

**SHELLEY LYNN BURTON TRUST**

By: \_\_\_\_\_  
Printed Name: Shelley L. Burton  
Title: Trustee

Date: \_\_\_\_\_

**JEAN MITCHELL BURTON  
TESTAMENTARY TRUST**

By: \_\_\_\_\_  
Printed Name: Shelley Burton  
Title: Successor Trustee

Date: \_\_\_\_\_

**MARTIN M. BURTON IRREVOCABLE  
TRUST, dated April 16, 1987**

By: \_\_\_\_\_  
Printed Name: Shelley L. Burton  
Title: Trustee

Date: \_\_\_\_\_

**SHELLEY LYNN BURTON, as her  
separate estate**

By: \_\_\_\_\_  
Printed Name: Shelley L. Burton

Date: \_\_\_\_\_

**MELISSA MARY BURTON TRUST**

By: Kristina C. Udall, Jr.  
Printed Name: Kristina C. Udall  
Title: Trustee

Date: 12-18-18