

**CITY OF MERCER ISLAND
RESOLUTION NO. 1544**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCER ISLAND
AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE AND
SALE AGREEMENT WITH PARKWAY MANAGEMENT GROUP ET AL. TO
PURCHASE THE REAL PROPERTY AT 7810 SE 27TH STREET, MERCER
ISLAND, WASHINGTON**

WHEREAS, Parkway Management Group and various tenants in common (collectively, the Owners) own the real property located at 7810 SE 27th Street, Mercer Island, Washington (the Property), commonly known as the Tully's site; and

WHEREAS, the City is evaluating the Property as a potential site for long-term, transit commuter parking; and

WHEREAS, the City has offered to buy the Property from the Owners for appraised fair market value; and

WHEREAS; the Property is in close proximity to the future East Link light rail station at Mercer Island; and

WHEREAS, to purchase the Property, the City plans on utilizing the funds provided by Sound Transit in accordance with the Settlement Agreement approved by the City Council on October 17, 2017 (AB 5346), which allows reimbursement of up to \$4.41 million towards the development of long-term, transit commuter parking; and


WHEREAS, the proposed purchase and sale agreement is exempt from the State Environmental Policy Act pursuant to WAC 197-11-800(5)(a);

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON AS FOLLOWS:

The City Manager is hereby authorized to execute the Purchase and Sale Agreement between the buyer, City of Mercer Island, and seller, Parkway Management Group and the Tenant in Common Owners of the real property at 7810 SE 27th Street, Mercer Island, Washington (commonly known as the "Tully's site"), in substantially the form attached hereto as Exhibit 1.

PASSED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON AT ITS REGULAR MEETING ON THE 5TH DAY OF JUNE 2018.

CITY OF MERCER ISLAND



Debbie Bertlin, Mayor

ATTEST:



Deborah Estrada, City Clerk

PURCHASE AND SALE AGREEMENT

**by and
between**

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

as “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, collectively as “Seller”

Dated: June 7, 2018

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Exhibit A	Legal Description of Property
Exhibit B	Form of Earnest Money Note
Exhibit C	Form of Deed
Exhibit D	List of Reports Delivered to Buyer
Exhibit E	Form of Access Agreement

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “Agreement”) is by and among the CITY OF MERCER ISLAND, a Washington municipal corporation (the “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, the “Seller”) (hereinafter individually a “Party” or collectively the “Parties”). The Parties agree that the “Effective Date” of this Agreement shall be defined in Section 30. This Agreement is made with reference to the following recitals:

Recitals

- A. Seller owns the Property (as defined below), which is commonly known as the Tully’s site located at 7810 SE 27th Street, Mercer Island, Washington 98040.
- B. Buyer desires to purchase the Property to primarily develop it for transit commuter parking and other complementary uses determined by the Buyer (the “Project”).
- C. The Parties have deemed it beneficial to enter into a negotiated sale transaction whereby Buyer will acquire and develop the Property.

Agreement

NOW, THEREFORE, in consideration of the foregoing promises, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

Section 1. Purchase and Sale.

1.1 The Property. In consideration of their mutual covenants set forth in this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase and accept from Seller, for the Purchase Price (as defined in Section 2.1) and on the terms and conditions set forth in this Agreement and the exhibits hereto, the following:

1.1.1 That certain real property more particularly described in Exhibit A attached hereto (the “Land”).

1.1.2 All rights, covenants, interests, privileges and easements appurtenant to the Land, including without limitation all minerals, oil, gas and other hydrocarbon substances on the Land, all development rights, air rights, water, water rights and water stock relating to the Land, and any and all easements, rights-of-way and other appurtenances used in connection with the beneficial use and enjoyment of the Land (collectively, the “Appurtenances”).

1.1.3 Any improvements and fixtures located on the Land, including, without limitation, the retail building and any utility systems and environmental

investigation and remediation equipment on the Land (collectively, the “Improvements”).

1.1.4 No tangible personal property is included in the sale and Seller may remove all such Property before the Closing Date (as defined in Section 3.2); provided that, any tangible personal property remaining on the Property after Closing (as defined in Section 3.2) shall be considered abandoned by the Seller and may be removed by Buyer.

Section 2. Purchase Price.

2.1 Purchase Price. The purchase price for the Property is Two Million Dollars and No/100 (\$2,000,000.00) as hereinafter provided (the “Purchase Price”), payable in cash at Closing. Not later than 10:00 a.m., Pacific Time, on the Closing Date, Buyer shall deposit with the Escrow Holder (as defined in Section 2.2), via wire transfer, the Purchase Price, less the Deposit, Due Diligence Premium and the application of rent equivalent, if any, described in Section 4.1.2, together with Buyer’s share of closing costs and prorations.

2.2 Earnest Money.

2.2.1 Upon execution of this Agreement, Buyer shall execute a Promissory Note in the amount of One Hundred Fifty Thousand Dollars and No/100 (\$150,000.00) in the form attached hereto as Exhibit B (the “Earnest Money Note”). The Earnest Money Note shall be held by *First American Title Insurance Company, 818 Stewart Street, Suite 800, Seattle, Washington 98101*, as the Escrow Holder hereunder (“Escrow Holder” or the “Title Company”). Within three (3) Business Days after satisfaction of Buyer’s Inspection Condition set forth in Section 4.1.1 below, Buyer shall replace the Earnest Money Note with cash in the amount of One Hundred Fifty Thousand Dollars and No/100 (\$150,000.00) to be held as the earnest money deposit hereunder (the “Deposit”).

2.2.2 The Deposit shall be applicable to the Purchase Price. The Deposit shall be nonrefundable, except that the Deposit shall be refunded to Buyer in the event that (i) one of Buyer’s Conditions Precedent (as defined in Section 5 below) is not satisfied within the time period applicable to such condition, or (ii) the transaction fails to close due to a default on the part of Seller and through no fault of the Buyer. The Deposit shall be held in an interest-bearing account, with interest being included with the Deposit and going to the benefit of the Party entitled to the Deposit at Closing or other termination of this Agreement.

Section 3. Escrow; Closing.

3.1 Escrow. Buyer and Seller hereby appoint the Escrow Holder to hold the escrow and conduct the Closing under this Agreement. Buyer and Seller shall execute and deliver to Escrow Holder such instructions as may be necessary or convenient to implement the terms of this Agreement and close the transaction contemplated by

this Agreement, provided that they are not inconsistent with the terms of this Agreement.

- 3.2 Closing; Closing Date. The consummation of the purchase and sale of the Property (the “Closing”) shall take place sixty (60) days following the expiration of the Due Diligence Period (as defined in Section 4.1.1) (the “Closing Date”).

At the Seller’s option, in order to provide adequate time for the Seller to find an appropriate property to execute a Section 1031 Exchange, the Seller may extend the Closing Date up to one hundred eighty (180) days by giving Buyer notice of the Seller’s exercise of this option at least thirty (30) days prior to the Closing Date described in the immediately preceding paragraph. If Seller exercises its option to extend the Closing Date, one hundred percent (100%) of any rent equivalent paid by Buyer pursuant to Section 4.1.2 below, after what would have been the Closing Date except for the Seller exercising its option to extend the Closing Date, shall apply to the Purchase Price. Regardless of the Closing Date, the Seller shall provide the Buyer with a 30-day notice of intent to close.

- 3.3 Buyer’s Deliveries. At or before Closing, Buyer shall deliver into Escrow the following:

3.3.1 funds transmitted by wire transfer in the amount of the Purchase Price (less the amount of the Deposit, Due Diligence Premium and the amount of rent applied to the Purchase Price, if any, as described in Section 2.2), together with Buyer’s share of closing costs and proration pursuant to Section 10;

3.3.2 a real estate excise tax affidavit, executed by Buyer; and

3.3.3 two executed counterparts of the Easements, if any, as defined and provided in Section 5.3.

- 3.4 Seller’s Deliveries. At or before Closing, Seller shall deliver into Escrow the following:

3.4.1 a bargain and sale deed (the “Deed”) to the Property in the form attached hereto as Exhibit C, subject only to the Permitted Exceptions (as defined in Section 5.1), properly executed and acknowledged on behalf of Seller;

3.4.2 a real estate excise tax affidavit executed by Seller;

3.4.3 duplicate originals of an executed affidavit by Seller to the effect that Seller is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code of 1986, as amended;

3.4.4 two executed counterparts of the Easements, if any, as provided for in Section 5.3; and

3.4.5 the certificate described in Section 6.1.

- 3.5 Proof of Authority. Buyer and Seller each shall deliver such proof of authority and authorization to enter into this Agreement and consummate the transaction contemplated by this Agreement, and such proof of power and authority of the individual(s) executing and delivering any instruments, documents or certificates to act for and bind such Party, as reasonably may be required by the Title Company.
- 3.6 Other Documents. Buyer and Seller shall deliver such other documents or instruments as are reasonably required to consummate this transaction in accordance with this Agreement, including without limitation instructions from the Escrow Holder and each Party's respective closing statement.
- 3.7 Possession. Seller shall deliver possession of the Property to Buyer at Closing.
- 3.8 Disbursement and Other Actions. At the Closing, Escrow Holder promptly shall undertake all of the following in the manner indicated:
- 3.8.1 disburse all funds deposited with Escrow Holder by Buyer as follows:
- (a) disburse the Purchase Price to Seller, net the total amount chargeable to Seller, if any, as the result of prorations and credits pursuant to Section 10;
- (b) disburse the remaining balance of the funds, if any, to Buyer promptly following the Closing;
- 3.8.2 cause the Deed, the Easements (if any) and any other documents that the Parties may mutually direct to be recorded in the Official Records of King County, Washington, and obtain conformed copies thereof for distribution to Buyer and Seller;
- 3.8.3 direct the Title Company to issue the Title Policy to Buyer pursuant to Section 5.2 hereof; and
- 3.8.4 disburse to each Party the counterpart documents per the instructions of the Parties.

Section 4. Conditions Precedent to Closing.

- 4.1 Buyer's Conditions. For Buyer's benefit (and waivable by Buyer, and only Buyer, at any time), the following are conditions precedent to Buyer's obligation to consummate this transaction described in this Agreement ("Buyer's Conditions Precedent") and must be satisfied or waived by the date or within the time period indicated:

4.1.1 Due Diligence.

(a) Due Diligence Period. From the Effective Date through and including [_____, _____][**the date that is 120 days following the Effective Date**] (such period of time, the “Due Diligence Period”), as such period may be extended by: (1) the mutual agreement of the Parties; and/or (2) for a period of up to sixty (60) days by Buyer, provided, however, Buyer gives Seller written notice of its election to extend the Due Diligence Period prior to the expiration of the 120-day Due Diligence Period and pays Seller a daily fee as defined in Section 4.1.3 (“Due Diligence Premium”). Buyer in its sole discretion and at its sole expense, shall have the opportunity to inspect and approve the physical condition and use of the Property, the economic feasibility of the Project and any other matters relating to the Property as Buyer elects to undertake (collectively, the “Inspections”), including without limitation, the availability of financing, access, utility services, zoning, engineering, soils and environmental conditions, ability to develop upon the adjacent property known as Parcel 12, status of neighboring projects and a survey (the “Inspection Condition”). The plan for any invasive testing of the Property (including Phase II environmental sampling) shall be subject to Seller’s prior review and approval, not to be unreasonably withheld, conditioned, or delayed. The Inspection Condition must be satisfied or waived by the end of the Due Diligence Period.

If for any reason whatsoever Buyer determines that the Property is unsuitable for its purposes in its sole and absolute discretion and notifies Seller of such decision before the end of the Due Diligence Period, then this Agreement shall terminate. If Buyer does not provide written notice to Seller of its approval of this condition by the end of the Due Diligence Period, the Inspection Condition shall not be satisfied, and this Agreement shall terminate. In the event of either such termination, Escrow Holder shall promptly return the Earnest Money Note to Buyer after Seller’s receipt of copies of environmental due diligence materials developed by Buyer. If this Agreement does not terminate at the end of the Due Diligence Period, the Inspection Condition shall be considered to have been satisfied, and the Deposit shall not be refundable to Buyer by reason of the Inspection Condition.

(b) Access to Property. Further, until the Closing Date or earlier termination of this Agreement, Buyer and its authorized contractors, engineers, surveyor, appraiser, consultants, employees, lenders and agents shall have the right to enter onto the Property for purposes of undertaking the Inspections. Such entry shall be pursuant to a Site Access Agreement between the Seller and Buyer (the “Access Agreement”) in the form attached hereto as Exhibit E (which agreement may have been executed by the Parties before execution of this Agreement). Buyer agrees to indemnify Seller and to hold Seller, Seller’s agents and employees harmless from and against any and all losses, costs, damages, claims or liabilities including, but not limited to, construction, mechanic’s and material men’s liens and attorneys’ fees, to the extent caused by Buyer’s entry upon the Property, including the conduct of the Inspections, by Buyer or its contractors, consultants, employees

or agents under this Section 4.1.1. This indemnity shall survive Closing or termination of this Agreement.

(c) Reports and Disclosure Statement. Seller has previously delivered to Buyer copies of all reports about the physical condition of the Property that have been prepared at the request of Seller or that are in Seller's possession or under its control, including environmental and soils reports, which reports are listed on Exhibit D hereto (the "Reports"). Seller disclaims any responsibility for the accuracy of any information contained in the Reports, and Buyer acknowledges that it uses the Reports at its own risk. If for any reason whatsoever Buyer determines that the environmental contamination on the Property is unsuitable for its purposes before the end of the Due Diligence Period, then Buyer shall be entitled to exercise its rights to terminate this Agreement under Section 4.1.1(a). If this Agreement terminates or the purchase and sale fails to close, Buyer promptly shall return the Reports (and all copies thereof) to Seller.

Seller shall provide a real property transfer disclosure statement as provided for in chapter 64.06 RCW (the "Seller Disclosure Statement") to Buyer within 5 days after the Execution Date. Nothing in the Seller Disclosure Statement creates a representation or warranty by Seller, nor does it create any rights or obligations in the Parties except as set forth in chapter 64.06 RCW, as amended. Buyer is advised to use due diligence to inspect the Property to Buyer's satisfaction, subject to the terms of this Agreement, and Seller may not have knowledge of defects that careful inspection might reveal.

(d) Negotiation with Past Owners/Operators; Assignment of Claims. During the Due Diligence Period, and as further set forth in Section 9, Buyer shall have reached (a) a settlement and/or remediation agreement with BP/ARCO in a form mutually acceptable to Seller and Buyer which includes but is not limited to an indemnification as to Seller, Buyer and future owners and; (b) a mutually acceptable assignment of Seller's entire interest and/or rights in claims against past owners, operators and/or insurance to Buyer.

4.1.2 Rent. In consideration to the Seller for not renting or re-renting the Property during the time Parties spent negotiating this Agreement (the "Purchase and Sale Negotiation Period" (defined below), the Due Diligence Period and the time between the expiration of the Due Diligence Period and Closing (the "Closing Period"), the Buyer agrees to pay the Seller \$4,000 rent equivalent per month for each month and/or partial month during the Purchase and Sale Negotiation Period, Due Diligence Period and Closing Period starting the beginning of the month the Letter of Intent (dated March 19, 2018) between the Parties (the "LOI") was executed. 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 applicable to the Purchase Price at 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 applicable to the Purchase Price at Closing.

4.1.3 Due Diligence Premium. If the Buyer wishes to extend the Due Diligence Period, as provided in Section 4.1.1(a), the Buyer shall pay the Seller an additional \$100 per day for each day beyond the agreed 120-day Due Diligence Period. These payments shall be made to the Seller by the first of each month. These funds shall be nonrefundable to the Buyer.

4.1.4 Title Policy. On the Closing Date, the Title Company shall be prepared to issue the Title Policy to Buyer as of the Closing Date in accordance with Section 5 of this Agreement.

4.1.5 Representations and Warranties. On the Closing Date, Seller's representations and warranties contained in Section 6.1 are true and correct, as if made as of the Closing Date, except as provided in Section 6.3.

4.1.6 Seller's Performance. Seller has duly and timely performed each and every other material obligation to be performed by Seller under this Agreement before Closing.

4.2 Seller's Conditions. For Seller's benefit (and waivable by Seller, and only Seller, at any time), the following are conditions precedent to Seller's obligation to consummate this transaction ("Seller's Conditions Precedent") and must be satisfied or waived by the date or within the time period indicated:

4.2.1 Buyer's Performance. Buyer has duly and timely performed each and every material obligation to be performed by Buyer under this Agreement prior to Closing.

4.2.2 Buyer's Representations and Warranties. Buyer's representations and warranties set forth in Section 6.2 are true and correct as if made as of the Closing Date, except as provided in Section 6.3.

4.2.3 BP/ARCO Settlement and Assignment of Claims. During the Due Diligence Period (a) a settlement and/or remediation agreement with BP/ARCO in a form acceptable to Seller which includes but is not limited to an indemnification as to Seller, Buyer and future owners and; (b) an acceptable assignment of Seller's entire interest and/or rights in claims against past owners, operators and/or insurance to Buyer.

Section 5. Evidence of Title.

5.1 Commitment. Within five (5) days following the Effective Date, Seller shall cause delivery to Buyer of a preliminary title commitment for a standard ALTA owner's policy of title insurance ("Commitment"), together with the underlying documents forming the basis of the exceptions, issued by the Title Company. Buyer may also obtain an ALTA/ACSM survey of the Property (the "Survey") during the Due

Diligence Period. Buyer shall have until fifteen (15) days after the Effective Date to object to any matter disclosed in the Commitment or the Survey by giving written notice (the "Title Defect Notice") of the objection to Seller. If, after the initial issuance of the Commitment and giving of the initial Title Defect Notice, the Title Company amends the Commitment by adding a new exception thereto, or the Survey reveals any new matters affecting title, Buyer shall be entitled to give a Title Defect Notice to such exception within ten (10) Business Days after receipt of the amendment. Any matters not referenced in a timely Title Defect Notice shall be deemed approved by Buyer and are referred to herein as "Permitted Exceptions." Within ten (10) Business Days after receiving a Title Defect Notice, Seller shall notify Buyer in writing of any disapproved exception(s) that Seller declines to cure. Thereafter Buyer shall have five (5) Business Days to either waive the exception Seller has declined to cure (which thereafter shall constitute a Permitted Exception) or to terminate this Agreement. In the event of such termination, Escrow Holder shall promptly return the Earnest Money Note to Buyer.

Anything to the contrary in this Agreement notwithstanding, Seller shall have no affirmative obligation to expend any funds or incur any liabilities to cause any title exceptions to be removed from the Commitment (or any update thereto) or insured over, except that Seller shall pay or discharge any lien or encumbrance voluntarily created, permitted or assumed by Seller (except current taxes and assessments) and not created by or resulting from the acts of Buyer or other parties not related to Seller.

- 5.2 Issuance of Policy. At Closing, the Title Company shall be prepared to issue an extended 2006 ALTA owner's title insurance policy ("Title Policy") in the amount of the Purchase Price insuring Buyer and subject only to (a) a lien for real property taxes, not then delinquent; (b) Permitted Exceptions approved or deemed approved by Buyer; (c) matters affecting the condition of title to the Property resulting from the actions or activities of Buyer or created by or with the written consent of Buyer.
- 5.3 Utility Easements. To the extent that there are existing utilities that cross the Property for which Seller requires an easement to serve other property or that crosses other property owned by Seller adjacent to the Property (excluding adjacent streets) for which Buyer requires an easement to serve the Property, Buyer and Seller will enter into utility easements therefor at Closing (the "Easements"). Each Party will notify the other of the need, if any, for such utility easements within 45 days after the Effective Date and Buyer shall provide a copy of the survey it obtains during the Due Diligence Period promptly upon receipt to facilitate this review. If such utility easements are needed, Seller shall provide its form of utility easement for Buyer's review. If the Parties cannot agree on the forms of such utility easements before the end of the Due Diligence Period, then Buyer shall be entitled to exercise its rights to terminate this Agreement under Section 4.1.1(a).

Section 6. Representations and Warranties.

- 6.1 Seller. Except as known or disclosed to Buyer prior to Closing, Seller represents and warrants that as of the Effective Date of this Agreement:

6.1.1 Seller has the legal power, right and authority to enter into this Agreement and all documents required to be executed by Seller under this Agreement and to consummate the transaction contemplated by this Agreement.

6.1.2 To Seller's actual knowledge, except for a potential unlawful detainer action which may be filed against Global Baristas (dba Tully's Coffee), there are no pending or threatened (in writing) actions, suits, arbitrations, claims or proceedings, at law or in equity, adversely affecting the Property or to which Seller is a party by reason of Seller's ownership of the Property, including any eminent domain proceeding; further, Seller has not received any notices from any governmental authority with respect to any violation of any statute, ordinance or regulation applicable (or alleged to be applicable) to the Property.

6.1.3 Except for any matters shown on the Commitment, Seller has not entered into any oral or written leases, subleases, rental agreements licenses, service or maintenance agreements or other contracts or agreements (written or oral) with respect to the ownership, operation, maintenance, use or occupancy with respect to the Property or any portion thereof that would encumber the Property or bind Buyer after Closing.

6.1.4 Seller disclosed and the Buyer acknowledged that the Property is a commercial property, has been operated as a gasoline station, and that Hazardous Substances (as defined in Section 9) are present in the soils and groundwater at and/or emanating from the Property. Seller provided the Buyer with all copies of the environmental reports that are in Seller's possession or under its control relative to the Property.

6.1.5 The Reports listed on Exhibit D are all of the reports in Seller's possession or under its control regarding the physical condition of the Property.

Seller shall promptly notify Buyer of any new event or circumstance of which Seller has actual knowledge that occurs or arises after the date hereof and that makes any representation or warranty of Seller under this Agreement untrue in any respect that would materially affect Buyer's development of the Property. The foregoing representations and warranties shall be deemed made as of Closing except to the extent modified by a certificate delivered by Seller at Closing, notifying Buyer of any changes arising prior to Closing.

6.2 Buyer. Buyer represents and warrants that as of the date it executes this Agreement and as of Closing:

6.2.1 Buyer has the legal power, right and authority to enter into this Agreement and the documents required to be executed by Buyer under this Agreement, and to consummate the transactions contemplated by this Agreement.

6.2.2 All requisite action (City Council approval) has been taken by Buyer in connection with entering into this Agreement and the documents required hereby to be executed by Buyer and the consummation of the transactions contemplated hereby.

6.3 Changes in Representations and Warranties. The foregoing representations and warranties are to be made by the Parties as of the Effective Date of this Agreement and as of the Closing Date. If after the Effective Date and before the Closing Date, a Party making a representation and warranty (the “Representing Party”) becomes aware of facts that would cause such representation and warranty to be untrue or incomplete, the Representing Party shall notify the other Party (the “Nonrepresenting Party”) in writing within five (5) Business Days after discovery of the new facts, and include copies of documents or materials, if any, related to such new facts (the “Change Notice”). If a representation and warranty can no longer be accurately made by the Representing Party and this is (i) due to a state of facts first arising after the Effective Date, (ii) not intentionally caused by the Representing Party, (iii) such new state of facts materially and adversely affects a right, remedy or obligation of the Nonrepresenting Party under this Agreement, prevents a Party from performing as required herein, or, in the case of Buyer, the materially increases the costs associated with Buyer’s intended use of the Property or materially decreases value of the Property, then the Nonrepresenting Party may by written notice to the Representing Party elect to terminate this Agreement. In such event, Escrow Holder shall promptly return the Earnest Money Note or Deposit, whichever is applicable, to Buyer and neither Party shall have any further obligations hereunder (except as provided in Section 4.1.1). Such election must be exercised within five (5) Business Days after the Nonrepresenting Party receives a Change Notice. During such five (5) day period, however, the Parties shall negotiate in good faith about possible solutions to address the change in facts (e.g., proposals for courses of actions to cure the issue or price adjustments).

Section 7. As Is.

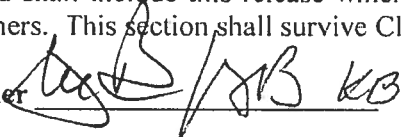
Buyer acknowledges and agrees that Buyer knows and is aware that: the Property is a commercial property that was operated as a gasoline station; Hazardous Substances (as defined in Section 9) are located in the soils and groundwater in, on, at and emanating from the Property; and, Buyer is purchasing the Property “as is where is” in its present condition. Except for the warranty of title set forth in the deed or in any other document executed by Seller at Closing, Seller makes no representations or warranties, express or implied, with respect to, and shall have no liability for: (a) the condition of the Property or any buildings, structures or improvements thereon or the suitability of the Property for Buyer’s intended use; (b) any applicable building, zoning or fire laws or regulations or with respect to compliance therewith or with respect to the existence of or compliance with any required permits, if any, of any governmental agency; (c) the availability or existence of any water, sewer or utilities, any rights thereto, or any water, sewer or utility districts; (d) access to any public or private sanitary sewer or drainage system; or (e) the past, present or future presence of any Hazardous Substances (as defined in Section 9) in, on, at or emanating from or to the Property or in any improvements on the Property. Without limiting the generality of the foregoing, except as expressly set forth in the deed, or in any other document executed by Seller at closing, Seller shall have no liability with respect to the condition of the Property under common law, or any federal, state, or local law or regulation including, without limitation, environmental laws, or for the presence of any hazardous materials or substances. Buyer acknowledges that Buyer is given the opportunity under this Agreement to fully access

and inspect the Property and documentation in Seller's possession, and Buyer assumes the responsibility and risks of all defects and conditions, including, without limitation, such defects and conditions, if any, that cannot be observed by casual inspection. This section shall survive Closing. Buyer is a sophisticated buyer who is familiar with the ownership and operation of real estate projects similar to the property, and Buyer has or will have adequate opportunity to complete all physical and financial examinations relating to the acquisition of the Property hereunder it deems necessary, and will acquire the same solely on the basis of and in reliance upon such examinations and the title insurance protection afforded by the title policy and not on any information provided or to be provided by Seller (other than as expressly provided in this Agreement, the deed or in any other document executed by Seller at Closing).

Section 8. Environmental Release.

Following the Closing, Buyer waives and releases Seller and Seller's officers, trustees, members, managers, agents, heirs, successors, assigns, executors, or personal representatives, and forever releases and discharges Seller and Seller's officers, trustees, members, managers, heirs, successors, assigns, executors, or personal representatives, from any and all damages, claims, losses, liabilities, penalties, fines, liens, judgments, costs or expenses or rights of contribution whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, that may arise on account of or in any way connected with the physical condition of the Property or any property owned by Buyer and affected or impacted in any way by Hazardous Substances (as defined in Section 9) originating at the Property including, without limitation, the presence of hazardous materials or substances in, on, at under, or emanating from or to the Property, or noncompliance with any law or regulation applicable thereto, under common law, or any federal, state, or local law or regulation, including but not limited to environmental laws. Buyer acknowledges that the presence of Hazardous Substances may increase Buyer's cost of ownership, liability and development and that this release applies to any incremental development costs. The deed shall include this release which shall run with the land and be binding on all subsequent owners. This section shall survive Closing.

Seller



Buyer



Section 9. Environmental Indemnification, Assignments, and Claims.

9.1 Indemnification and Hold Harmless. Buyer hereby agrees to indemnify, defend and hold Seller and Seller's members, trustees, officers, members, managers, agents, heirs, successors, assigns, executors, or personal representatives (collectively, the "Indemnified Parties") harmless from and against any and all claims, actions, suits, damages, liabilities, losses, costs and expenses, including reasonable attorneys' fees (collectively, "Damages"), suffered or incurred by any of the Indemnified Parties as a result of Hazardous Substances on, in, under, at or emanating to or from the Property whether before or after Closing including any claims brought by third parties or government agencies.

Buyer's liability under this Section 9.1 includes the following:

and inspect the Property and documentation in Seller's possession, and Buyer assumes the responsibility and risks of all defects and conditions, including, without limitation, such defects and conditions, if any, that cannot be observed by casual inspection. This section shall survive Closing. Buyer is a sophisticated buyer who is familiar with the ownership and operation of real estate projects similar to the property, and Buyer has or will have adequate opportunity to complete all physical and financial examinations relating to the acquisition of the Property hereunder it deems necessary, and will acquire the same solely on the basis of and in reliance upon such examinations and the title insurance protection afforded by the title policy and not on any information provided or to be provided by Seller (other than as expressly provided in this Agreement, the deed or in any other document executed by Seller at Closing).

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Following the Closing, Buyer waives and releases Seller and Seller's officers, trustees, members, managers, agents, heirs, successors, assigns, executors, or personal representatives, and forever releases and discharges Seller and Seller's officers, trustees, members, managers, heirs, successors, assigns, executors, or personal representatives, from any and all damages, claims, losses, liabilities, penalties, fines, liens, judgments, costs or expenses or rights of contribution whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, that may arise on account of or in any way connected with the physical condition of the Property or any property owned by Buyer and affected or impacted in any way by Hazardous Substances (as defined in Section 9) originating at the Property including, without limitation, the presence of hazardous materials or substances in, on, at under, or emanating from or to the Property, or noncompliance with any law or regulation applicable thereto, under common law, or any federal, state, or local law or regulation, including but not limited to environmental laws. Buyer acknowledges that the presence of Hazardous Substances may increase Buyer's cost of ownership, liability and development and that this release applies to any incremental development costs. The deed shall include this release which shall run with the land and be binding on all subsequent owners. This section shall survive Closing.

Seller VCCU Dze

Buyer QM

Section 9. Environmental Indemnification, Assignments, and Claims.

9.1 Indemnification and Hold Harmless. Buyer hereby agrees to indemnify, defend and hold Seller and Seller's members, trustees, officers, members, managers, agents, heirs, successors, assigns, executors, or personal representatives (collectively, the "Indemnified Parties") harmless from and against any and all claims, actions, suits, damages, liabilities, losses, costs and expenses, including reasonable attorneys' fees (collectively, "Damages"), suffered or incurred by any of the Indemnified Parties as a result of Hazardous Substances on, in, under, at or emanating to or from the Property whether before or after Closing including any claims brought by third parties or government agencies.

Buyer's liability under this Section 9.1 includes the following:

and inspect the Property and documentation in Seller's possession, and Buyer assumes the responsibility and risks of all defects and conditions, including, without limitation, such defects and conditions, if any, that cannot be observed by casual inspection. This section shall survive Closing. Buyer is a sophisticated buyer who is familiar with the ownership and operation of real estate projects similar to the property, and Buyer has or will have adequate opportunity to complete all physical and financial examinations relating to the acquisition of the Property hereunder it deems necessary, and will acquire the same solely on the basis of and in reliance upon such examinations and the title insurance protection afforded by the title policy and not on any information provided or to be provided by Seller (other than as expressly provided in this Agreement, the deed or in any other document executed by Seller at Closing).

Section 8. Environmental Release.

Following the Closing, Buyer waives and releases Seller and Seller's officers, trustees, members, managers, agents, heirs, successors, assigns, executors, or personal representatives, and forever releases and discharges Seller and Seller's officers, trustees, members, managers, heirs, successors, assigns, executors, or personal representatives, from any and all damages, claims, losses, liabilities, penalties, fines, liens, judgments, costs or expenses or rights of contribution whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, that may arise on account of or in any way connected with the physical condition of the Property or any property owned by Buyer and affected or impacted in any way by Hazardous Substances (as defined in Section 9) originating at the Property including, without limitation, the presence of hazardous materials or substances in, on, at under, or emanating from or to the Property, or noncompliance with any law or regulation applicable thereto, under common law, or any federal, state, or local law or regulation, including but not limited to environmental laws. Buyer acknowledges that the presence of Hazardous Substances may increase Buyer's cost of ownership, liability and development and that this release applies to any incremental development costs. The deed shall include this release which shall run with the land and be binding on all subsequent owners. This section shall survive Closing.

Seller SB

Buyer JM

Section 9. Environmental Indemnification, Assignments, and Claims.

9.1 Indemnification and Hold Harmless. Buyer hereby agrees to indemnify, defend and hold Seller and Seller's members, trustees, officers, members, managers, agents, heirs, successors, assigns, executors, or personal representatives (collectively, the "Indemnified Parties") harmless from and against any and all claims, actions, suits, damages, liabilities, losses, costs and expenses, including reasonable attorneys' fees (collectively, "Damages"), suffered or incurred by any of the Indemnified Parties as a result of Hazardous Substances on, in, under, at or emanating to or from the Property whether before or after Closing including any claims brought by third parties or government agencies.

Buyer's liability under this Section 9.1 includes the following:

(a) Any costs of, or liability for, investigation, cleanup, removal, treatment, remediation or monitoring of any Hazardous Substance;

(b) Any damages resulting from the diminution in value or unmarketability of the Property or any other real or personal property; and

(c) Any fines, penalties, assessments, judgments or other liabilities resulting from any claim, judgment or finding concerning the violation of any Environmental Law.

Buyer's liability under this Section 9.1 expressly excludes:

(d) Damages to the extent caused by the Indemnified Parties' willful misconduct;

(e) Any consequential or punitive Damages suffered or incurred by any Indemnified Parties.

9.2 Buyer's Defense and Indemnity. Buyer's defense and indemnity under Section 9.1 is expressly conditioned on the Indemnified Parties' agreement to:

(a) Reasonably and timely tender all claims for defense and/or indemnity to Buyer;

(b) Not settle or compromise defenses to any claims for defense and/or indemnity, or take any action prejudicial to Buyer;

(c) Mutual selection of legal counsel regarding any claims for defense and/or indemnity.

9.3 Pursuit of Potentially Responsible Parties. Seller shall work cooperatively with Buyer to obtain from past owners and operators a fully executed settlement and/or remediation agreement for Seller's and Buyer's respective benefit, the form of which is acceptable to Buyer and Seller and which may expressly include an indemnification as to Seller, Buyer, and future owners.

9.4 Environmental Remediation Claims. Except as addressed under Section 9.3, Seller agrees to assign to Buyer the Seller's entire interest and/or rights in environmental remediation claims against past owners and/or insurance. Buyer does not waive, and expressly reserves, all claims Buyer may have against any and all third parties (i.e. persons or entities other than Seller and/or Indemnified Parties) relating to the presence of Hazardous Substances at, on, under, or migrating from the Property, provided that to the extent Buyer pursues claims against such third parties, and such third parties consequently pursue claims against any Seller Parties, Buyer shall defend, indemnify, and hold harmless such Seller Parties from any such claim.

9.4.1 Seller agrees to seek recovery against applicable insurance, when allowed by law, for liability associated with any property damage on the Property. Buyer is hereby irrevocably appointed and constituted the Seller's agent and attorney-in-fact to make demand and commence legal action, arbitration or administrative proceedings, as Buyer deems fit, to tender, pursue and collect any all such money, proceeds or insurance claims or other third-party claims in the name of Seller and to receive any such money or proceeds in the name of the Seller of otherwise; and

9.4.2 To the extent allowable by law, Seller assigns and transfers to the Buyer any all claims and causes of action now existing and in the future arising under, against or relating to any and all insurance policies issued to, insuring and/or covering Seller in connection with current and future liabilities associated with the Property. This assignment includes all claims for defense, indemnity and bad faith including (without limitation) those relating to the liability.

9.4.3 In the situations identified in Sections 9.4.1 and 9.4.2 above,

(a) Buyer shall pay all fees and costs in pursuing insurance and third parties.

(b) Buyer has the exclusive right to appoint attorneys and consultants to pursue this insurance and any other third parties.

(c) Buyer shall have the exclusive right to decide and determine whether such legal action, arbitration or administrative proceedings shall be made, or commenced, settled, compromised, tried, appealed or withdrawn and to execute in the name of the Buyer or the Seller any documents that may be appropriate thereto.

(d) Buyer shall have the exclusive right to decide and determine whether any claim, demand, liability or suit made by the Buyer shall or shall not be settled, compromised, defended, tried or appealed, and the Buyer's decision thereon, if made in good faith, shall be conclusive and binding.

(e) Seller shall fully cooperate with Buyer in the pursuit of these claims at no cost to Seller.

9.4.4 Definitions. For purposes of this Section 9.4, the following definitions shall apply:

(a) "causes of action" means choses in action, causes of action, claims, privileges, rights, title and interest.

(b) "policies" means all insurance policies, known and unknown, issued to or insuring Seller as an "insured," "assured," "named insured" or "additional named insured" (collectively referred to as the "policies").

9.5 Definitions.

9.5.1 “Hazardous Substance” as used herein, shall mean any substance or material now or hereafter defined or regulated as a hazardous substance, hazardous waste, toxic substance, pollutant, or contaminant under any federal, state, or local law, regulation, or ordinance governing any substance that could cause actual or suspected harm to human health or the environment (“Environmental Law”). The term “Hazardous Substance” specifically includes, but is not limited to, petroleum, petroleum by-products, and asbestos.

9.5.2 “Environmental Law” as used herein, shall mean all federal, state, and local laws, statutes, rules, regulations, ordinances, and codes, and any judicial or administrative interpretation thereof or requirement thereunder, relating to the regulation or protection of human health, safety, the environment and natural resources, including the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Substances Transportation Act (49 U.S.C. §§ 5101 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Clean Water Act (33 U.S.C. §§ 1251 et seq.), the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Emergency Planning and Community Right-To-Know Act (42 U.S.C. §§ 11001 et seq.), and any similar or comparable state or local laws, including without limitation, the Model Toxics Control Act (Chapter 70.105D RCW) (“MTCA”) and the Hazardous Waste Management Act (Chapter 70.105 RCW.)

9.6 Reservation of Rights. Buyer does not waive, and expressly reserves, all claims Buyer may have against Seller to enforce Section 9.

9.7 Successors and Assignment. The provisions of Section 9 shall extend to, bind and inure to the benefit of the Parties hereto and their respective successors and assigns. Buyer may assign its rights hereunder in whole or part to any party that accepts the Buyer’s responsibility under Section 9. Seller may not assign or transfer its rights or obligations under Section 9 without Buyer’s prior written consent, which may not be unreasonably withheld.

Section 10. Costs and Expenses.

Seller shall pay (a) the premium for the standard portion of the Title Policy, (b) one-half (1/2) of all escrow fees and costs, and (c) Seller’s share of prorations. Buyer shall pay for (d) the premiums for the extended coverage portion or additional title insurance coverage or endorsements, (e) the costs of the Survey, (f) all recording charges, (g) one-half (1/2) of all escrow fees and costs, and (h) Buyer’s share of prorations. Because Buyer is a public entity, no excise tax will be due on the Sale. Buyer and Seller shall each pay their own legal and professional fees and fees of other consultants. All property taxes and assessments arising from and after Closing shall be the sole responsibility of Buyer. All other costs and expenses shall be allocated between Buyer and Seller in accordance with the customary practice in the City of Mercer Island, County of King,

and State of Washington. If the transaction is terminated by either Party on account of default by the other, the defaulting Party shall pay all escrow and title costs billed by the Escrow Holder.

Section 11. Condemnation.

If before the Closing Date any condemnation or eminent domain proceedings are initiated that might result in the taking of all of the Property, then this Agreement shall terminate. If such proceeding proposes to take less than all of the Property, and the portion of the Property to be taken (i) has a value in excess of \$200,000, (ii) would take any right of access to the Property, or (iii) is necessary for the development of the Project and the Project cannot be reasonably and economically reconfigured (each, a "Material Taking"), Buyer may:

- (a) terminate this Agreement by written notice to Seller whereupon the Parties shall proceed in accordance with Section 14 for a termination that is not the fault of either party; or
- (b) proceed with the Closing, in which event Seller shall assign to Buyer in writing at Closing all of Seller's right, title and interest in and to any award made in connection with such condemnation or eminent domain proceedings.

Seller shall immediately notify Buyer in writing of the commencement or occurrence of any condemnation or eminent domain proceedings. If such proceedings would result in a Material Taking of any of the Property, Buyer shall then notify Seller, within ten (10) days of Buyer's receipt of Seller's notice, whether Buyer elects to exercise its rights under clause (a) or clause (b) of this Section 11. Closing shall be delayed, if necessary, until the later to occur of (i) the Closing Date or (ii) five (5) Business Days after the expiration of the 10-day period. If Buyer fails to timely elect to proceed under this Section 11, then Buyer will be deemed to have elected clause (b) above. If a taking is not a Material Taking, the Parties shall proceed in accordance with clause (b) above. This Section 11 shall not apply to any condemnation initiated by Buyer.

Section 12. Lease & Property Management Matters.

The Seller shall continue to have full responsibility for property management until the Buyer waives its Inspection Contingency and the Deposit becomes nonrefundable, at which time the Buyer shall assume said responsibilities and have access to the Property. Seller shall not approve any new leases, extensions or renewals during the Due Diligence Period, unless otherwise approved by the Buyer.

The Property would be conveyed at Closing free and clear of any and all leases and all contracts for the furnishing of goods, labor, construction or other services to the Property, unless otherwise approved by Buyer.

Section 13. Legal and Equitable Enforcement of this Agreement.

13.1 Default by Seller. This Agreement pertains to the conveyance of the Property, the unique nature of which is hereby acknowledged by the Parties. Consequently, if Seller refuses or fails without legal excuse to convey the Property to Buyer as

required by this Agreement, or otherwise defaults in its obligations hereunder, and provided that Buyer is not default in its obligations hereunder, Buyer shall have the right to elect one of the following remedies: (a) specific performance of this Agreement; or, alternatively, (b) to terminate this Agreement upon written notice to Seller and receive a return of the Deposit, in which case neither Party shall have any further obligations to the other hereunder, except for those duties and obligations stated in the Agreement that expressly survive hereunder and Section 29 concerning attorney's fees. In no event shall Seller be liable to Buyer for any damages to Buyer, other than the return of the Deposit if Buyer elects to proceed under *clause (b)* above.

- 13.2 Default by Buyer. If Buyer fails without legal excuse to complete the purchase of the Property, the Deposit shall be forfeited to Seller as liquidated damages and payment by Buyer of any attorney's fees and enforcement costs due under Section 29 below, is the sole and exclusive remedy against Buyer available to Seller for Buyer's failure to complete the purchase of the Property as required under this Agreement. In no event shall Seller be entitled to specific performance against Buyer for such failure. If the Closing fails to occur by reason of Buyer's default, the Parties agree that the damages that Seller would suffer thereby are difficult or impossible to determine. Accordingly, the Parties agree that the Deposit is a reasonable estimate of such damages and shall be and constitute valid liquidated damages, and not a penalty, considering all circumstances that exist on the date of this Agreement, including: (1) the relationship of the foregoing sum to the range of harm to Seller that could reasonably be anticipated; and (2) the anticipation that proof of actual damages would be impracticable or extremely difficult to determine. This provision is not intended to apply to obligations that survive a termination of this Agreement, including but not limited to the provisions of Section 4.1.1 or the Access Agreement (Exhibit E), and Seller shall be entitled to receive amounts due thereunder in addition to the Deposit.

Section 14. Termination for Failure of Condition.

If any of the conditions set forth herein are not satisfied or waived by the date provided in such condition, the Party entitled to benefit of such condition shall have the right to terminate this Agreement and the escrow provided for herein by giving written notice of such termination to the other Party and to Escrow Holder. In the event of such termination, all escrow and title charges shall be divided equally between the Parties and this Agreement will be of no further force and effect and the Parties shall have no further liability except as expressly set forth in this Agreement for matters expressly stated to survive termination of this Agreement and in the Access Agreement (Exhibit E). All documents delivered to Escrow Holder shall be returned to the depositing party, the Deposit shall be returned to Buyer and Buyer shall return to Seller all due diligence items delivered by Seller to Buyer (and all copies thereof) that are in the Buyer's possession or under its control within five (5) business days after such termination.

Section 15. Notice.

All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following addresses:

If to Buyer: City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040-3732
Attention: Julie Thuy Underwood, City Manager
E-mail: julie.underwood@mercergov.org
Phone: 206-275-7600

With a copy to: City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040-3732
Attention: Kari Sand, City Attorney
E-mail: kari.sand@mercergov.org
Phone: (206) 275-7650

If to Seller: Frank M. Buty, Partner
Parkway Center Management Group
1150 Alki Ave SW, Apt. 4
Seattle, WA 98116
E-mail: fmbuty@gmail.com
Phone: (206) 719-0601

AND

Shelley Burton, Partner
Parkway Center Management Group
3820 NE 155th Place. #101
Lake Forest Park, WA 98155
E-mail: slb2012@q.com
Phone: 206-367-3221

With a copy to: John Houlihan
Houlihan Law, P.C.
100 N 35th Street
Seattle, WA 98103
E-mail: john@houlihan-law.com
Phone: (206) 547-5052

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) days after deposit, postage prepaid in the U.S. mail, (b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when actually delivered pursuant to the records of such courier, (c) sent by electronic mail to the party and its counsel, return receipt required, in which case notice shall be deemed

delivered on the next Business Day following confirmed receipt, or (d) hand delivered, in which case notice shall be deemed delivered on the date of the hand delivery. Any notice given by counsel to a party shall have the same effect as if given by such party. The above addresses and phone numbers may be changed by written notice to be provided the other party in accordance with this Section 15; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

Section 16. Time of Essence.

Time is of the essence of this Agreement.

Section 17. Governing Law; Jurisdiction.

The construction, validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Washington without regard to its conflict of law principles. In the event any action is brought to enforce any of the provisions of this Agreement, the Parties agree to be subject to the jurisdiction in the King County Superior Court for the State of Washington or in the United States District Court for the Western District of Washington.

Section 18. Counterparts; Transmissions.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that executed counterparts may be transmitted by facsimile or as a digital document by electronic mail and such transmitted, executed counterparts shall be treated as an executed original counterpart.

Section 19. Captions.

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

Section 20. Assignability.

Buyer shall not assign its rights under this Agreement without Seller's prior written consent, which may be withheld for any reason within the Seller's sole discretion. Any assignment of this Agreement shall not release the assigning party of its obligations under Sections 7, 8, and 9.

Section 21. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors and permitted assigns.

Section 22. Modifications; Waiver.

No waiver, modification amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge or change is sought.

Section 23. Entire Agreement.

This Agreement contains the entire agreement, including all of the exhibits attached hereto, between the Parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations or statements, oral or written including, but not limited to the LOI, are superseded hereby.

Section 24. Fair Construction; Severability.

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the context may require. The Parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arms' length so that the judicial rule of construction to the effect that any ambiguities are to be construed against the drafting party shall be inapplicable in the interpretation of this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the other provisions contained herein in order to achieve the objectives and purposes of this Agreement. If any term, provision, covenant, clause, sentence or any other portion of the terms and conditions of this Agreement or the application thereof to any person or circumstances shall apply, to any extent, become invalid or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable to most nearly retain the intent of the Parties, and if such modification is not possible, such provision shall be severed from this Agreement and the remainder of this Agreement shall continue in full force and effect, unless rights and obligations of the Parties have been materially altered or abridged by such invalidation or unenforceability.

Section 25. Survival.

The representations and warranties in this Agreement shall survive the Closing of this transaction for a period of ninety (90) days following Closing, and written notice of any claim by a Party for a breach thereof must be delivered to the other Party within such time period. In addition, the indemnities and agreements contained in Section 4.1.1(b) (Access to Property), Section 7 (As Is), Section 8 (Environmental Release), Section 9 (Environmental Indemnification, Assignments, and Claims), Section 27 (Brokers) and Section 29 (Attorneys' Fees) shall survive the termination or expiration of this Agreement and shall survive the Closing. Except for the foregoing provisions, all other agreements of the Parties contained in this Agreement shall terminate upon Closing.

Section 26. No Third-Party Rights.

Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their respective successors and assigns, any rights or remedies under or

by reason of this Agreement. No term or provision of this Agreement shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder, except as may be otherwise expressly provided herein. Nothing in this Section 26 is intended to modify the restrictions on assignment contained in Section 20 hereof.

Section 27. Brokers.

Seller and Buyer represent each to the other that each has had no dealings with any broker, finder or other party concerning Buyer's purchase of the Property. Seller agrees to indemnify and hold Buyer harmless from all loss, cost, damage or expense (including reasonable attorney's fees) incurred by Buyer as a result of any claim arising out of the acts of Seller for a commission, finder's fee or similar compensation made by any broker, finder or any party who claims to have dealt with Seller. Buyer agrees to indemnify and hold Seller harmless from all loss, cost, damage or expense (including reasonable attorney's fees) incurred by Seller as a result of any claim arising out of the acts of Buyer for a commission, finder's fee or similar compensation or made by any broker, finder or any party who claims to have dealt with Buyer. The indemnities contained in this Section 27 shall survive the Closing or the termination of this Agreement.

Section 28. Business Days; Computation of Time.

The term "Business Day" as used herein means any day on which banks in Mercer Island, Washington are required to be open for business, excluding Saturdays and Sundays. In the computation of any period of time hereunder, the day of the act or event from which the period of time runs shall be excluded and the last day of such period shall be included. If any deadline hereunder falls on a day that is not a Business Day, then the deadline will be deemed extended to the next following Business Day.

Section 29. Attorneys' Fees.

If any legal action or other proceeding is brought for the enforcement of this Agreement (including, without limitation, enforcement of any obligation to indemnify, defend or hold harmless), or because of an alleged dispute, default or misrepresentation in connection with any of the provisions of this Agreement, the substantially prevailing party shall be entitled to recover the reasonable attorneys' fees (including those in any bankruptcy or insolvency proceeding), accountants' and other experts' fees and all other fees, expenses and costs incurred in connection with that action or proceeding, in addition to any other relief to which it may be entitled.

Section 30. Effective Date.

The Effective Date of this Agreement shall be the day and year last written by the signatures below. Until this Agreement has been signed by all Parties, it shall not be legally binding.

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BUYER:

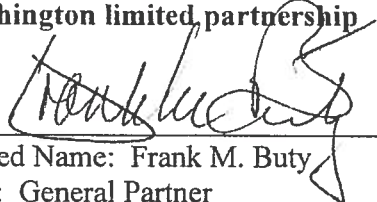
**CITY OF MERCER ISLAND, a
municipal corporation**

By: 
Name: Julie Thuy Underwood
Its: City Manager

Date: 6/7/18

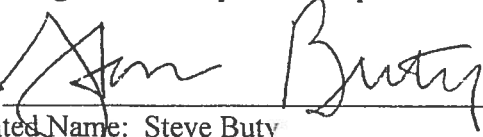
SELLERS:

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

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

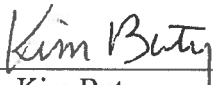
Date: May 19, 2018

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

By: 
Printed Name: Steve Buty
Title: General Partner

Date: 5-19-2018

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

By: 
Printed Name: Kim Buty
Title: General Partner

Date: 5/19/18

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: _____

BUYER:

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

By: _____

Name: Julie Thuy Underwood
Its: City Manager

Date: _____

SELLERS:

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

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

By: _____

Printed Name: Frank M. Buty
Title: General Partner

By: _____

Printed Name: Steve Buty
Title: General Partner

Date: _____

Date: _____

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

SHELLEY LYNN BURTON TRUST

By: _____

Printed Name: Kim Buty
Title: General Partner

By: Shelley L. Burton

Printed Name: Shelley L. Burton
Title: Trustee

Date: _____

Date: May 18, 2018

**JEAN MITCHELL BURTON
TESTAMENTARY TRUST**

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

By: Shelley L. Burton

Printed Name: Shelley Burton
Title: Successor Trustee

By: Shelley L. Burton

Printed Name: Shelley L. Burton
Title: Trustee

Date: May 18, 2018

Date: May 18, 2018

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

MELISSA MARY BURTON TRUST

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

By: _____
Printed Name: Kristina C. Udall
Title: Trustee

Date: May 18, 2018

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: 5-19-2018

EXHIBIT A

**Legal Description of Property
King County Parcel No. 531510-1235**

LOT 1 AND THAT PORTION OF LOT 2, BLOCK 15, MCGILVRA'S ISLAND ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 16 OF PLATS, PAGE 58, IN KING COUNTY, WASHINGTON; LYING NORTHERLY OF THE NORTH MARGIN OF NORTH MERCER WAY, AS ESTABLISHED BY DEED RECORDED UNDER RECORDING NUMBER 2561652;

EXCEPT PORTIONS OF SAID LOTS 1 AND 2 CONDEMNED FOR PRIMARY STATE HIGHWAY NO. 2 IN KING COUNTY SUPERIOR COURT CAUSE NO. 312351;

AND EXCEPT THE WEST 113.5 FEET IN WIDTH THEREOF.

EXHIBIT B

Form of Earnest Money Note

PROMISSORY NOTE

\$150,000.00

Dated: June 7, 2018

FOR VALUE RECEIVED, CITY OF MERCER ISLAND, a Washington municipal corporation (“Maker”), promises to pay to the order of *FIRST AMERICAN TITLE INSURANCE COMPANY* (“Holder”), 818 Stewart Street, Suite 800, Seattle, WA 98101, the principal sum of ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO/100 (\$150,000.00), as the Earnest Money Note in accordance with Section 2.2 of that certain Purchase and Sale Agreement between Maker, as 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 (collectively, as “Seller”), dated **June 7, 2018** (the “Agreement”). This Note shall be payable within three (3) Business Days after satisfaction of Buyer’s Inspection Condition under Section 4.1.1 the Agreement.

Maker’s failure to pay the Earnest Money if required by the terms of the Agreement shall constitute a default by Maker under both the Agreement and this Note.

Maker promises to pay all costs, expenses and attorneys’ fees incurred by Holder in the exercise of any remedy (with or without litigation) under this Note in any proceeding for the collection of the debt evidenced by this Note, or in any litigation or controversy arising from or connected with this Note.

Delay in exercising any of the Holder’s rights or options hereunder shall not constitute a waiver thereof, and waiver of any right or option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

The provisions of this Note shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto. This Note shall be construed according to the laws of the State of Washington and pursuant to the terms and conditions of the Agreement. Time is of the essence of this Note and each and every term and provision hereof.

MAKER:

CITY OF MERCER ISLAND,
a Washington municipal corporation


By: 
Name: Julie Thuy Underwood
Title: City Manager

EXHIBIT C

Form of Deed

After Recording Return To:

City of Mercer Island
Attention: City Attorney's Office
9611 SE 36th Street
Mercer Island, Washington 98040

BARGAIN AND SALE DEED

GRANTORS:

GRANTEE: City of Mercer Island, a Washington municipal corporation

Legal Description:

Abbreviated Form:

Additional legal on Page ____

Assessor's Tax Parcel ID#:

THE GRANTORS, _____, for and in consideration of ten dollars (\$10) in hand paid, bargains, sells and conveys to the Grantee, City of Mercer Island, a Washington municipal corporation, the following described real estate, situated in the County of King, State of Washington.

See Exhibit A attached hereto.

Subject to and excepting those matters listed in Exhibit B attached hereto and incorporated herein by this reference.

Dated _____, 2018.

GRANTORS

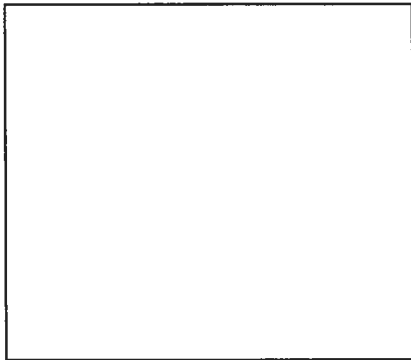
[Do Not Sign – Exhibit Only]

By: _____
Its: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she as authorized to execute the instrument and acknowledged it as the _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

EXHIBIT A TO DEED

Legal Description

EXHIBIT B TO DEED

Exceptions

(to be added)

EXHIBIT D

List of Reports Delivered to Buyer

[to come]

EXHIBIT E

SITE ACCESS AGREEMENT

This SITE ACCESS AGREEMENT (the “Agreement”) dated as of June 7, 2018, is by and between 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 (collectively, as “Seller”) and City of Mercer Island, a Washington municipal corporation (“Buyer”) with reference to the following:

RECITALS

A. Buyer is under contract to purchase certain property (the “Property”) described on Exhibit A attached hereto from the Seller pursuant to a Purchase and Sale Agreement dated June 7, 2018 (the “Purchase Agreement”).

B. Under the Purchase Agreement, Buyer has the right to enter onto the Property and conduct its due diligence investigations to determine whether the Project is feasible and to engage in planning for the Project.

C. Buyer or its consultants and their respective employees, contractors and agents (collectively the “Consultants”) desires to perform the investigations and Project planning, including a surveyor, environmental consultant and geotechnical consultant on the Property. As provided in the Purchase Agreement, Seller wishes to cooperate in this investigation by granting to Buyer and Consultants a license to conduct such an investigation subject to the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. Seller grants to Buyer and Consultants a temporary non-exclusive license, subject to terms hereof, to enter upon the Property for the purpose of conducting activities on the Property to investigate the condition thereof and the feasibility of the Project as well as planning for the Project (the “Investigation Activities”). Buyer and Consultant may enter onto the Property pursuant to this License. In no event shall any drilling, penetrations or other invasive testing or inspections be done without the written approval of Seller, whose approval shall not be unreasonably withheld, conditioned or delayed.

The License granted herein shall continue in force from the date hereof and terminate upon the earlier to occur of (i) the closing of Buyer’s acquisition of the Property under the Purchase Agreement, or (ii) the earlier termination of the Purchase Agreement for any reason (the “Term”).

2. Buyer shall or shall cause its Consultants to remove all equipment, materials and debris used in or resulting from the Investigation Activities before the end of the Term unless Buyer purchases the Property pursuant to the Purchase Agreement. If Seller approves of any invasive testing, all samples and investigation residuals derived from the Investigation Activities

when removed from the Property shall be transported and disposed of by Buyer or Consultants in accordance with applicable law.

3. All persons who enter the Property pursuant to this Agreement assume the risk of doing so. Buyer waives any claims against Seller and releases Seller from any liability for any loss, damage or injury to Buyer, its Consultants or their property arising from the Investigation Activities, excluding those claims to the extent arising out of the negligence or willful misconduct of Seller, its employees, agents and contractors. Seller shall not be responsible for the safety of Buyer or its Consultants in their conduct of the Investigation Activities. Except as expressly provided in the Purchase Agreement, Seller has no responsibility or liability whatsoever for the condition of the Property. Buyer will repair and restore the Property to at least as good condition as existed before Buyer's or its Consultant's entry onto the Property (normal wear and tear excepted). Buyer and its Consultants shall be responsible for any damage done to the Property by Buyer or its Consultants. While on the Property pursuant to this Agreement, Buyer will comply and will cause all Consultants to comply with all applicable government laws and regulations concerning the Investigation Activities on the Property. Buyer will not suffer or permit to be enforced against the Property any mechanics, materialmen's or contractor's liens or any claim for damage arising from the work of any survey, tests, investigation, repair, restoration, replacement or improvement performed by Buyer or its Consultants as part of the Investigation Activities, and Buyer shall pay or cause to be paid all claims or demands with respect to the same before any action is brought to enforce the same against the Property.

Buyer will indemnify, protect, defend and hold Seller, its officers, and employees harmless from any loss, damage, injury, accident, fire or other casualty, liability, claim, lien, cost or expense (including attorneys' fees) of any kind or character to the extent arising from or caused by (a) entry on the Property by Buyer or its Consultants pursuant to this Agreement, (b) any act or omission of Buyer or any of its Consultants in the conduct of the Investigation Activities, (c) a violation or alleged violation by Buyer or its Consultants of any law or regulation in their conduct of the Investigation Activities, or (d) violation of this Agreement by Buyer or any of its Consultants. Seller's right of indemnity under this section shall not limit or waive any other legal claim or defense Seller may have outside of this Agreement.

IN CONNECTION WITH THIS INDEMNITY, BUYER WAIVES ANY IMMUNITY IT MAY HAVE UNDER INDUSTRIAL INSURANCE LAW, RCW TITLE 51. THIS WAIVER WAS MUTUALLY NEGOTIATED.

4. Buyer shall, during the term of this Agreement, maintain commercial general liability insurance, with the coverage of not less than \$1,000,000 for each occurrence and a \$2,000,000 general aggregate limit, on an occurrence basis from a reputable insurer licensed to do business in Washington, and shall, upon request, furnish to Seller certificates of insurance evidencing such coverage. Seller will be named as an additional insured under the policy.

5. All of the covenants of Buyer and indemnities permitted by Buyer hereunder shall survive termination of the license granted hereunder.

6. All Investigation Activities shall be performed solely at Buyer's expense, and neither Buyer nor Consultants shall look to Seller for reimbursement of or contribution for all or any part of those expenses.

7. All notices hereunder shall be delivered by a recognized overnight courier service or by certified mail, return receipt requested, to the addresses set forth below or to such other addresses of a party as are set forth in a notice by that party to the other parties:

If to Buyer: City of Mercer Island
9611 SE 36th Street
Mercer Island, Washington 98040-3732
Attention: Julie Thuy Underwood, City Manager
E-mail: julie.underwood@mercergov.org
Phone: 206-275-7600

If to Seller: Frank M. Buty, Partner
Parkway Center Management Group
1150 Alki Ave SW, Apt. 4
Seattle, WA 98116
E-mail: fmbuty@gmail.com
Phone: (206) 719-0601

AND

Shelley Burton, Partner
Parkway Center Management Group
3820 NE 155th Place. #101
Lake Forest Park, WA 98155
E-mail: slb2012@q.com
Phone: 206-367-3221

With a copy to: John Houlihan
Houlihan Law
100 N 35th Street
Seattle, WA 98103
E-mail: john@houlihan-law.com
Phone: (206) 547-5052

8. This Agreement may be executed in one or more counterparts, but all of which together shall constitute one and the same instrument. The Parties agree that executed counterparts may be transmitted by facsimile or as a digital document by electronic mail and such transmitted executed counterparts shall be treated as an executed original counterpart.

9. The Parties agree that this Agreement shall be governed by the laws of the State of Washington without regard to its conflict of law principles.

10. All defined terms used in this Agreement shall have the same meaning that they have in the Purchase and Sale Agreement unless expressly stated otherwise.

IN WITNESS HEREOF, the Parties have duly executed this Agreement as of the date first set forth above.

BUYER:

CITY OF MERCER ISLAND, a Washington municipal corporation

By: 

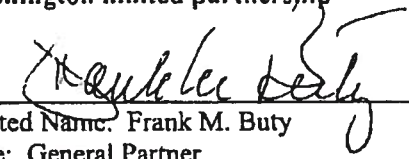
Name: Julie Thuy Underwood

Title: City Manager

Date: 6/12/18

SELLERS:

BUTY LIMITED PARTNERSHIP, a Washington limited partnership

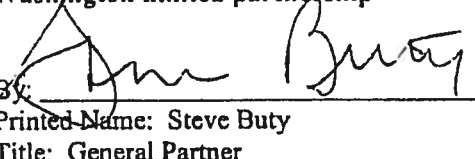
By: 

Printed Name: Frank M. Buty

Title: General Partner

Date: May 22, 2018

BUTY LIMITED PARTNERSHIP, a Washington limited partnership

By: 

Printed Name: Steve Buty

Title: General Partner

Date: 5-22-2018

BUTY LIMITED PARTNERSHIP, a Washington limited partnership

By: 

Printed Name: Kim Buty

Title: General Partner

Date: 5-22-18

**JEAN MITCHELL BURTON
TESTAMENTARY TRUST**

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

Date: May 18, 2018

SHELLEY LYNN BURTON TRUST

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

Date: May 18, 2018

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

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

Date: May 18, 2018

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

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

Date: May 18, 2018

MELISSA MARY BURTON TRUST

By: _____
Printed Name: Kristina C. Udall
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 TRUST

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

Date: _____

MELISSA MARY BURTON TRUST

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

Date: 5-19-2018

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

By: _____
Printed Name: Shelley L. Burton

Date: _____

EXHIBIT A to Site Access Agreement

Legal Description of Property

LOT 1 AND THAT PORTION OF LOT 2, BLOCK 15, MCGILVRA'S ISLAND ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 16 OF PLATS, PAGE 58, IN KING COUNTY, WASHINGTON; LYING NORTHERLY OF THE NORTH MARGIN OF NORTH MERCER WAY, AS ESTABLISHED BY DEED RECORDED UNDER RECORDING NUMBER 2561652;

EXCEPT PORTIONS OF SAID LOTS 1 AND 2 CONDEMNED FOR PRIMARY STATE HIGHWAY NO. 2 IN KING COUNTY SUPERIOR COURT CAUSE NO. 312351;

AND EXCEPT THE WEST 113.5 FEET IN WIDTH THEREOF.