

AGREEMENT FOR ACQUISITION OF REAL PROPERTY BY EMINENT DOMAIN

THIS AGREEMENT (“Agreement”) is entered into by the City of Mercer Island, a Washington city (“City”) and EPE 2, LLC, a Washington limited liability company (“Owner”) for the purposes hereafter stated.

RECITALS

A. Owner is the owner of a single parcel of land located in the City of Mercer Island on which two buildings are located: (1) a building commonly known as 9675 SE 36th Street, and (2) a building known as 9655 SE 36th Street. The land underlying the single parcel consists of two King County tax parcels, #2655500095 and #265550097. The line between the two tax parcels bisects the building known as 9675 SE 36th Street.

B. The City desires to acquire the building known as 9655 SE 36th Street, together with the land underlying the building and an easement over, under, across, along, in, and upon the land underlying the building known as 9675 SE 36th Street to provide ingress and egress between SE 36th Street and the land and building the City desires to acquire. The purpose of the City’s acquisition is to use the building, land, and easement as Mercer Island City Hall or for other City office purposes.

C. The City is authorized to acquire property for public buildings using the power of eminent domain. The City has notified Owner that City intends to exercise eminent domain to acquire the land and building at 9655 SE 36th Street and the easement for ingress and egress. The use of eminent domain will allow the City to acquire only that portion of Owner’s single parcel that is necessary to serve the City’s needs.

D. In response to the City’s notification of its intent to use eminent domain, Owner has agreed to cooperate with the City and the parties have agreed upon the terms set forth below as the pathway to complete acquisition by the City.

AGREEMENT

NOW, THEREFORE, in consideration of and subject to the terms and conditions set forth below, Owner and the City agree as follows:

1. Land and Improvements to be Acquired by the City. The land and improvements to be acquired by the City are defined as follows:

1.1 All right, title, and interest in the land described on Exhibit A and depicted for purposes of illustration only on Exhibit B attached hereto and incorporated herein by this reference as if set forth in full (the “Land”); and

1.2 All right, title, and interest in any improvements located on the Land, including but not limited to, the building known as 9655 SE 36th Street, parking and other surface

structures and improvements, and below and above ground utility lines and connections (the “Improvements”); and

1.3 An easement for vehicular and pedestrian ingress and egress over, under, across, along, in, and upon the land described on Exhibit C and depicted for purposes of illustration only on Exhibit D attached hereto and incorporated herein by this reference as if set forth in full (the “Access Easement”). As provided in Subsection 8.7 below, the Access Easement shall not require the City to maintain the easement area and the responsibility for maintenance of the easement area shall remain solely with the Owner.

2. Exercise of Eminent Domain – Waiver of Notice. Subject to the approval of the Mercer Island City Council and the enactment of an ordinance exercising such power, the City will acquire the Land, Improvements, and Access Easement by exercising the power of eminent domain pursuant to Chapters 8.12 and 8.25 of the Revised Code of Washington (RCW). The City’s purpose for acquiring the Land, Improvements, and Access Easement is to use the same for office purposes as Mercer Island City Hall. Owner hereby waives the mailed notice of planned final action by the Mercer Island City Council required by RCW 8.25.290(2)(a).

3. Petition for Condemnation. The City agrees to file a petition for condemnation in King County Superior Court within fifteen (15) days after the Mercer Island City Council passes an ordinance authorizing the exercise of eminent domain as required by RCW 8.12.040. The City shall petition to acquire the Land, Improvements, and Access Easement free from the interests of Owner and all other persons claiming an interest in the Land, Improvements, and Access Easement, provided, that the City agrees to take title subject to (a) the leasehold interest, if any, of Yellow Wood Academy, which Owner has represented will terminate on September 30, 2025, and (b) the antenna lease granted by Owner (or Owner’s predecessor in title) to AT&T (or AT&T’s predecessor) on June 5, 2002. Owner represents that there are no other leasehold interests in the Land or Improvements as of the date of this Agreement.

4. Service. Owner authorizes its attorney, John Paul Turner of Rodgers Deutsch & Turner, to accept service of the petition for condemnation on Owner’s behalf. The City will name and serve all other necessary parties to the condemnation action.

5. Stipulation as to Public Use and Necessity. If requested by the City, Owner agrees to stipulate in the eminent domain court proceedings that the purpose for which the Land, Improvements, and Access Easement is acquired is a public use, i.e., for the occupation, use, maintenance, and improvement of offices for Mercer Island City Hall. Owner also agrees, if requested by the City, to stipulate that the Land, Improvements, and Access Easement are necessary for such use.

6. Owner to Provide Documents. Owner agrees to provide the following documents to the City within ten (10) days of the date this Agreement is signed, without the necessity of the City having to request the same under discovery, unless the Owner has already done so:

6.1 Copies of (i) all environmental investigation reports conducted in connection with the Land and Improvements; (ii) any toxic and geological studies, endangered

species studies, development agreements, letters or reports received from governmental entities and any other documents pertaining to the Land or Improvements that Buyer deems necessary; and (iii) any Records of Survey.

6.2 Copies of all current leases and any amendment thereto for the Land or the Improvements, including but not limited to, the lease between the Owner and Yellow Wood Academy and the antenna lease between the Owner and AT&T.

6.3 Copies of all documents related to repairs or improvements to the Land and Improvements within the preceding five years, including but not limited to, design and as-built plans and contracts with contractors or vendors for such repairs or improvements.

6.4 Copies of any current maintenance or service contracts relating to the Land and Improvements.

6.5 Estoppel certificates signed by all current tenants of Owner as to the Land or the Improvements, certifying at a minimum (i) the term of the tenant's lease, (ii) the rental amount, (iii) the amount of any security or other deposits, (iv) any modifications to the Land or Improvements made by the tenant, (v) the existence or nonexistence of any sublease, (vi) the date of the tenant's last payment of rent, (vii) agreement that all improvements or repairs to be made by Owner under the lease have been satisfactorily completed, (viii) that the lease remains in full force and effect and no default exists, (ix) that the tenant is unaware of any liens or encumbrances against the Land or Improvements.

7. Agreement on Just Compensation. Owner and the City agree that the just compensation to be paid to Owner and all others with interests in the Land, Improvements, and Access Easement described in Section 1 above is Nine Million Sixty Thousand and No/100ths Dollars (\$9,060,000.00), and that such just compensation is inclusive of the fair market value of the Land, Improvements and Access Easement, as well as severance damages, if any, to Owner's remaining land and building at 9575 SE 36th Street that may be or become due and owing as the result of the City's use of eminent domain as provided herein.

8. Payment of Just Compensation – Grant of Access Easement by City - Escrow. Owner and the City agree to utilize an escrow agent to facilitate the clearing of title and disbursement of the just compensation in lieu of depositing the just compensation into the registry of the court and providing for disbursement under an agreed order. Subject to the provisions of Subsection 8.1 below, the City and the Owner will use the following escrow procedures:

8.1 The City has obtained a title report (the "Title Report") for the Land to be acquired by the City and the land to be retained by the Owner which will be subject to the Access Easement. The Owner and the City agree to use of an escrow to clear those encumbrances from title that would ordinarily entitle the holder of the encumbrance to a share of the condemnation proceeds if the just compensation was deposited in the registry of the court. Use of an escrow is contingent, however, upon the Owner and the City obtaining agreement for such use from holders of encumbrances that would ordinarily entitle the holder to a portion of the just compensation. If any holder of an interest objects to the use of an escrow to satisfy their interest in the just

compensation, the City shall deposit the just compensation into the registry of the court and proceed as provided in Section 9.

8.2 If an escrow is agreed to, Owner and the City shall agree upon an escrow agent (the “Escrow Agent”) to serve as a closing agent for the transaction contemplated by this Agreement.

8.3 The Escrow Agent will ascertain the necessary amounts that must be paid to the holders of encumbrances that would be entitled to a share of the condemnation proceeds in order to receive a full or partial release of all encumbrances that might otherwise entitle the holder to a share of the just compensation and which encumber the Land, Improvements, or Access Easement to be acquired by the City, provided, that no releases are required from the lessees under the leases described in Section 3 that the City has agreed to take subject to.

8.4 The City will deposit the full amount of the just compensation described in Section 6 with the Escrow Agent. The City will also deposit an amount equal to the escrow fees to be charged by the Escrow Agent.

8.5 Owner and the City will deliver to the Escrow Agent a signed Stipulation and Agreed Judgment and Decree of Appropriation to be returned to the City for entry by the court after closing.

8.6 Owner shall also deliver to the Escrow Agent a Satisfaction of Judgment to be transmitted to the City for filing upon entry of the Stipulation and Agreed Judgment and Decree of Appropriation.

8.7 At closing, the City agrees to grant Owner an easement for vehicular and pedestrian ingress and egress over, under, in and upon a portion of the Land to provide for circulation between the Land and Owner’s remainder property. The parties shall agree on the legal description of the easement to be granted to Owner and the easement shall generally provide the Owner with access over the drive aisles and sidewalk areas located on the Land acquired by the City. In consideration of the mutual access provided by the access easement acquired by the City over the Owner’s remainder property and the access granted to the Owner pursuant to this Subsection, each party shall be solely responsible for maintaining the areas of their respective fee interest properties over which the easements are granted or acquired, without contribution from the other party.

8.8 The Escrow Agent will be authorized to close the escrow and disburse funds upon (i) receipt of the full amount of the just compensation, (ii) receipt of the signed Stipulation and Agreed Judgment and Decree of Appropriation and the signed Satisfaction of Judgment; (iii) receipt of full or partial releases from all holders of encumbrances that would be entitled to a share of the condemnation proceeds, including but not limited to, Owner’s lenders, (iv) recording of the releases from the holders of the encumbrances, (v) receipt of the signed easement from the City to the Owner described in Subsection 8.7 above, and (vi) an irrevocable commitment from Chicago Title Insurance Company to issue a standard Owner’s title insurance policy insuring the City’s interest in the Land, Improvements, and easement upon entry of the

Stipulation and Agreed Judgment and Decree of Appropriation and the recording of the same. The City may, in its discretion, seek an extended Owner's title insurance policy.

8.9 In addition to paying off the encumbrance holders, the Escrow Agent shall pay any pro-rated real estate taxes due and owing, any prorated utility charges, and the fee for a standard Owner's title insurance policy to be issued by Chicago Title Insurance Company from the just compensation deposited by the City. If the City decides to obtain an extended Owner's title insurance policy, any premium amount for such policy in excess of the cost for a standard Owner's title insurance policy shall be the responsibility of the City to pay.

8.10 Upon closing, the Escrow Agent shall deliver the signed Stipulation and Agreed Judgment and Decree of Appropriation and the signed Satisfaction of Judgment to the City. Owner agrees to the filing of the same with the Court without formal notice to Owner. The City will provide Owner's attorney with conformed copies of the same.

8.11 Upon closing and upon the filing of the Stipulation and Agreed Judgment and Decree of Appropriation and the Satisfaction of Judgment, the Escrow Agent shall record the access easement granted to Owner by the City, as described in Subsection 8.7.

8.12 Upon closing, the Escrow Agent shall deliver the remainder of the just compensation deposited by the City, after all deductions described in this Section 8, to the Owner per written instructions from Rodgers Deutsch & Turner.

9. Alternative Procedure if No Agreement by Holders of Encumbrances. If any holder of any encumbrance on title that would ordinarily entitle such holder to a share of the condemnation proceeds objects to the settlement of the condemnation through the use of an escrow, Owner and the City agree that, as an alternative to the escrow, they will execute a Stipulation and Agreed Judgment and Decree of Appropriation awarding the City title to the Land, Improvements, and Access Easement free and clear of all liens and encumbrances except the leases that the City has agreed to take subject to, and establishing the just compensation to be paid to all those with an interest in the Land, Improvements, and Access Easement as the amount described in Section 7 above. Upon entry of such Stipulation and Agreed Judgment and Decree of Appropriation, the City will deposit the full just compensation amount into the registry of the court for disbursement in the manner usual and customary in such condemnation actions. Owner agrees to execute a Satisfaction of Judgment and deliver the same to the City for filing upon deposit of the just compensation amount. The City waives any right to notice of any motion or order for disbursement.

10. No Relocation Expenses. Owner has represented to the City that Yellow Wood Academy gave notice to Owner of Yellow Wood's intention to move its school use to an alternative site and to terminate its lease prior to the City expressing any interest in the Land, Improvements, and Access Easement. The City is therefore not obligated, and does not intend, to pay Yellow Wood Academy any relocation expenses under Chapter 8.26 RCW. Owner agrees that Owner is not currently occupying the Land or Improvements and is not entitled to relocation expenses. Owner waives any claim for relocation expenses from the City and agrees that the just

compensation full compensates the Owner for the taking of the Land, Improvements, and Access Easement.

11. Entry and Recording of Stipulated Judgment and Decree of Appropriation – Filing and Recording of Satisfaction of Judgment. Upon closing of escrow as provided in Section 8 or if the City is required to carry forward with the condemnation procedures provided in Section 9, the City will cause the Stipulation and Agreed Judgment and Decree of Appropriation to be entered by the court and recorded in the title records of King County, Washington. The City will also cause the Satisfaction of Judgment to be filed with the court and recorded with the County. All recording fees shall be paid by the City.

12. 1033 Exchange. Owner has notified the City that Owner intends to reinvest the just compensation in other assets as allowed under Section 1033 of the United States Internal Revenue Code. The City agrees to cooperate with Owner in making any required representation or communication by the condemning entity to the Internal Revenue Service if requested to do so by the Owner, provided that the City shall not be required to expend any funds to do so and shall not be required to provide any information or make any representation that is not accurate.

13. Severability. If a court of competent jurisdiction holds any part, term, or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

14. Fair Meaning. The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

15. Nonwaiver. A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay, or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

16. Notices. Unless stated otherwise herein, all notices and demands under this Agreement shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

To the City: Jessi Bon
 City Manager
 City of Mercer Island
 9611 SE 36th Street
 Mercer Island, WA 98040

With copies to: Bio Park
 City Attorney
 City of Mercer Island

9611 SE 36th Street
Mercer Island, WA 98040

James E. Haney
Ogden Murphy Wallace, P.L.L.C.
701 Fifth Ave., Suite 5600
Seattle, WA 98104-7045

To Owner: Ann Tillotson
Governor
EPE 2, LLC
16108 Inglewood Ter NE
Kenmore, WA 98028-3965

With copy to: John Paul Turner
Rodgers Deutsch & Turner
11900 NE 1st Street, Suite 300
Bellevue, WA 98005-3049

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington without regard to its conflict of laws principles.

18. Venue. The exclusive venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for King County, Washington. Each party waives any right to file for an inconvenient forum.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement. Counterparts may be delivered via electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.


EXECUTED by the parties as of the date of the last signature appearing below.

CITY OF MERCER ISLAND

EPE 2, LLC

Jessi Bon, City Manager

Dated: _____



Ann Tillotson, Governor
Dated: June 17, 2025

EXHIBIT A

DESCRIPTION

TRACT 10 AND THE WEST 20.00 FEET OF TRACT 11, BLOCK 1, FRUITLAND ACRES TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 12 OF PLATS, PAGE 33, IN KING COUNTY, WASHINGTON, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE;

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT 10;
THENCE NORTH $01^{\circ}12'36''$ EAST, ALONG THE WEST LINE OF SAID TRACT 10, A DISTANCE OF 221.18 FEET TO THE POINT OF BEGINNING OF SAID LINE;
THENCE SOUTH $88^{\circ}14'00''$ EAST, A DISTANCE OF 44.44 FEET;
THENCE SOUTH $85^{\circ}11'35''$ EAST, A DISTANCE OF 31.49 FEET;
THENCE SOUTH $88^{\circ}48'46''$ EAST, A DISTANCE OF 117.35 FEET TO A POINT ON THE EAST LINE OF THE WEST 20.00 FEET OF SAID TRACT 11 AND THE TERMINUS OF SAID LINE;

CONTAINING 42,487 SQUARE FEET OR 0.9754 ACRES, MORE OR LESS;

SITUATE IN THE CITY OF MERCER ISLAND, COUNTY OF KING, STATE OF WASHINGTON.



THOMAS E. CARNER, P.L.S. 46879
BRH JOB NO. 2025046.00
JUNE 6, 2025

BUSH, ROED & HITCHINGS, INC.
15400 SE 30TH PL, SUITE 100
BELLEVUE, WA 98007
(206) 323-4144

EXHIBIT B

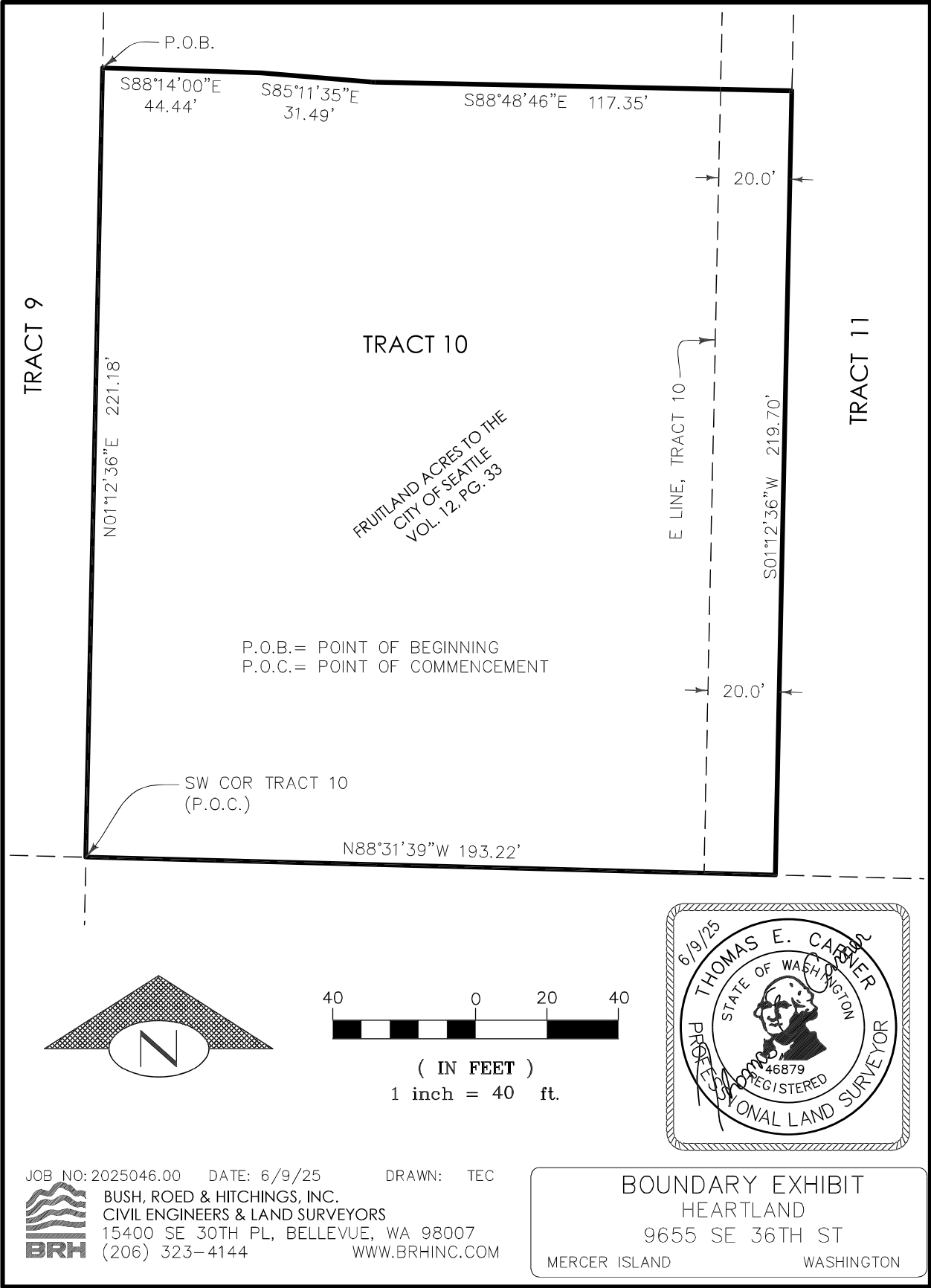


EXHIBIT C

DESCRIPTION

THAT PORTTION OF TRACT 10 AND THE WEST 20.00 FEET OF TRACT 11, BLOCK 1, FRUITLAND ACRES TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 12 OF PLATS, PAGE 33, IN KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION CONVEYED TO WASHINGTON TOLL BRIDGE AUTHORITY BY INSTRUMENT RECORDED APRIL 18, 1939 UNDER KING COUNTY RECORDING NUMBER 3041118;

AND EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON BY INSTRUMENTS RECORDED JUNE 13, 1985 UNDER KING COUNTY RECORDING NUMBERS 8506130031, 8506130032 AND 8506130033;

AND EXCEPT THAT PORTION THEREOF CONVEYED TO THE CITY OF MERCER ISLAND BY INSTRUMENT RECORDED NOVEMBER 30, 1988 UNDER KING COUNTY RECORDING NUMBER 8811301368.

DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH MARGIN OF SOUTHEAST 36TH STREET AND THE EAST LINE OF THE WEST 20.00 OF SAID TRACT 11;
THENCE SOUTH 01°12'36" WEST, ALONG SAID LINE, A DISTANCE OF 471.64 FEET;
THENCE NORTH 88°31'39" WEST, A DISTANCE OF 187.77 FEET;
THENCE NORTH 01°12'36" EAST, A DISTANCE OF 449.17 FEET;
THENCE NORTH 11°53'47" EAST, A DISTANCE OF 22.60 FEET;
THENCE NORTH 23°46'49" EAST, A DISTANCE OF 38.20 FEET;
THENCE NORTH 05°30'17" EAST, A DISTANCE OF 10.14 FEET TO A POINT ON THE SOUTH MARGIN OF SOUTHEAST 36TH STREET;
THENCE SOUTH 73°29'51" EAST, ALONG SAID MARGIN, A DISTANCE OF 25.47 FEET;
THENCE SOUTH 15°20'39" WEST, A DISTANCE OF 68.52 FEET;
THENCE SOUTH 48°18'04" WEST, A DISTANCE OF 11.72 FEET;
THENCE SOUTH 01°12'36" WEST, A DISTANCE OF 415.71 FEET;
THENCE SOUTH 88°31'39" EAST, A DISTANCE OF 140.17 FEET;
THENCE NORTH 01°12'36" EAST, A DISTANCE OF 459.37 FEET TO A POINT ON THE SOUTH MARGIN OF SOUTHEAST 36TH STREET;
THENCE SOUTH 73°29'51" EAST, ALONG SAID MARGIN, A DISTANCE OF 29.79 FEET TO THE POINT OF BEGINNING;

CONTAINING 26,816 SQUARE FEET OR 0.6156 ACRES, MORE OR LESS;

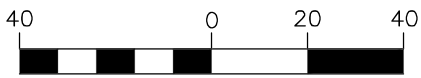
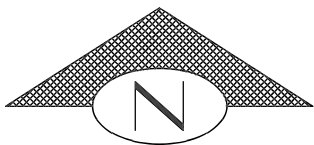
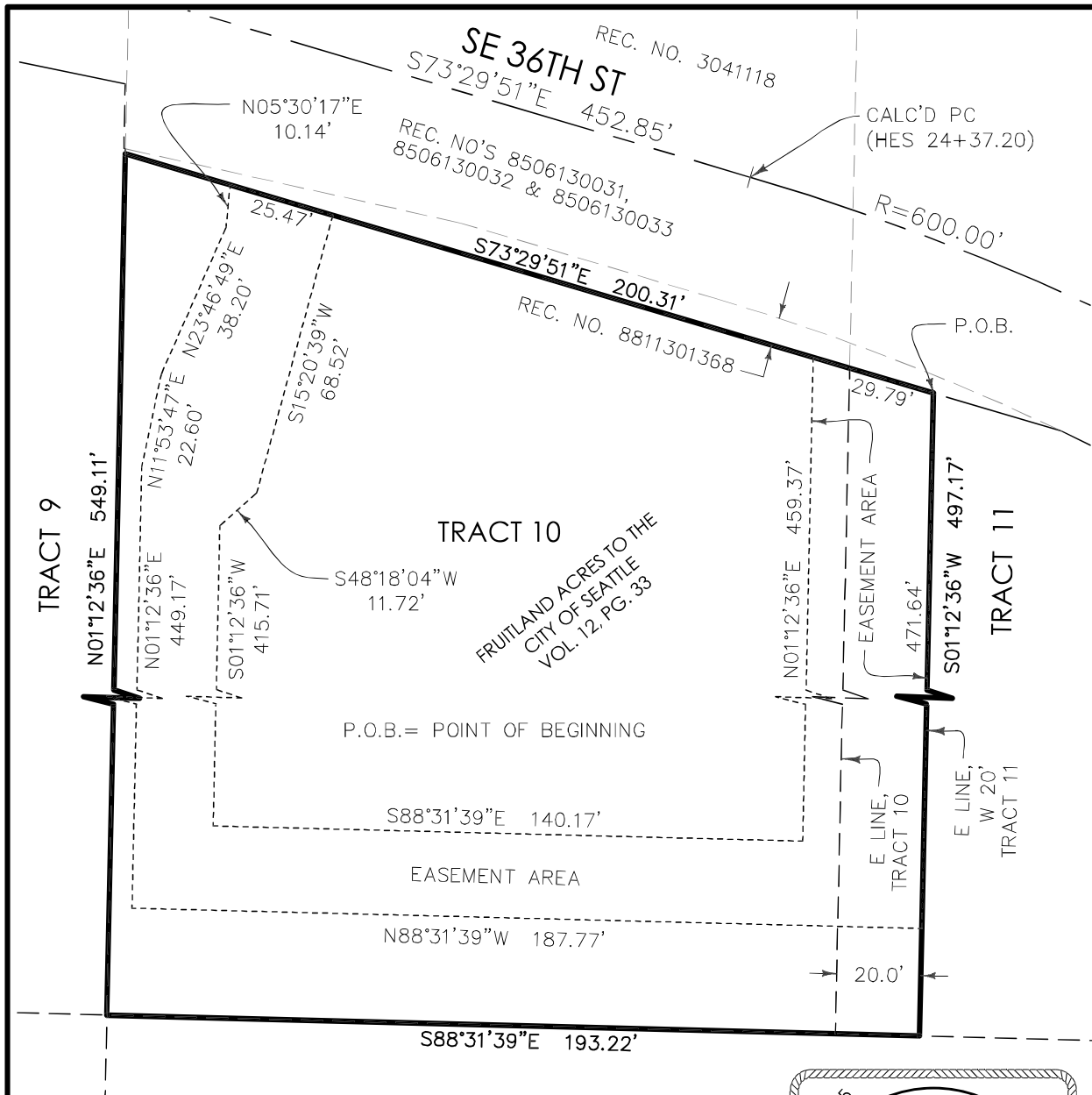
SITUATE IN THE CITY OF MERCER ISLAND, COUNTY OF KING, STATE OF WASHINGTON.



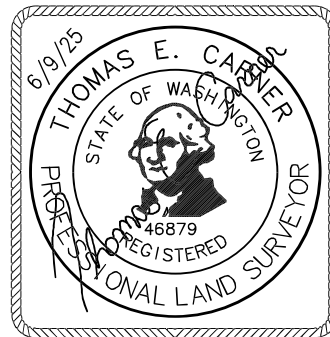
THOMAS E. CARNER, P.L.S. 46879
BRH JOB NO. 2025046.00
JUNE 9, 2025

BUSH, ROED & HITCHINGS, INC.
15400 SE 30TH PL, SUITE 100
BELLEVUE, WA 98007
(206) 323-4144

EXHIBIT D



(IN FEET)

$$1 \text{ inch} = 40 \text{ ft.}$$


JOB NO: 2025046.00 DATE: 6/9/25 DRAWN: TEC



BUSH, ROED & HITCHINGS, INC.
CIVIL ENGINEERS & LAND SURVEYORS
15400 SE 30TH PL, BELLEVUE, WA 98007
(206) 323-4144 WWW.BRHINC.COM

EASEMENT EXHIBIT
HEARTLAND

9655 & 9675 SE 36TH ST

MERCER ISLAND

WASHINGTON